

**EXTENSION AND REVISION OF  
GENERAL REVENUE SHARING:  
AREAS FOR COMMITTEE CONSIDERATION**

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**PREPARED FOR THE USE OF THE  
COMMITTEE ON FINANCE  
BY THE STAFF OF THE  
JOINT COMMITTEE ON INTERNAL  
REVENUE TAXATION**

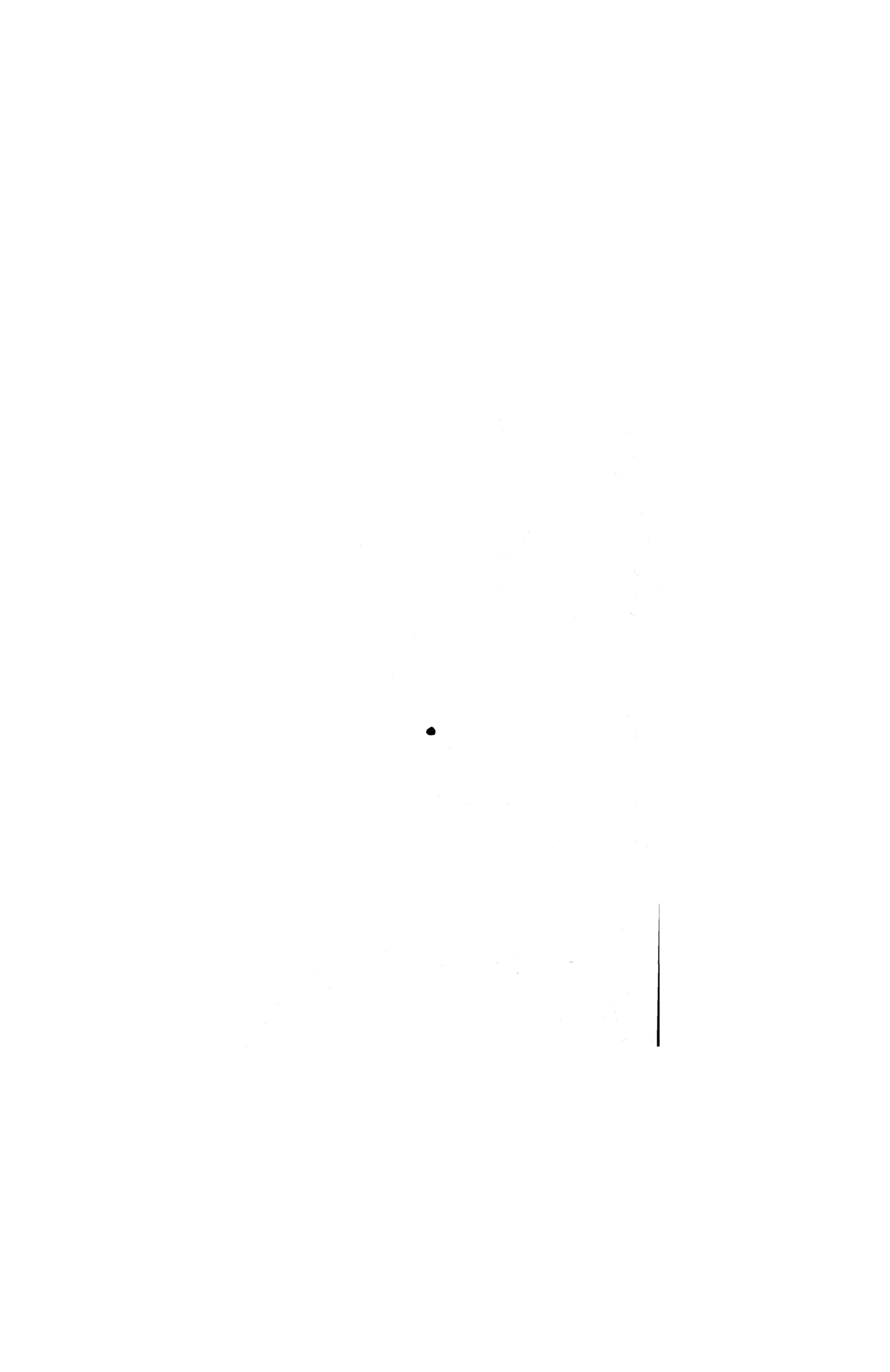


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## INTRODUCTION

This pamphlet discusses areas for committee consideration for the extension of general revenue sharing. The areas discussed below are: funding and amounts, distribution of funds, fiscal requirements, eligibility requirements, accounting and auditing, reports, hearings and public participation, nondiscrimination, and other. Each area discusses present law, issues in present law, the House bill (H.R. 13367), an analysis of the House bill, and alternative proposals. Appended is a transmittal from Mr. Richard Albrecht, General Counsel of the Treasury Department, which provides the views of the Department on the House bill.

### I. EXTENSION, FUNDING AND AMOUNTS

#### Present law

Payments to State and local governments under Title I of the State and Local Fiscal Assistance Act of 1972 ("the Act") end at the end of calendar 1976.<sup>1</sup> The payments began at an annual rate of \$5.3 billion per year and increased annually until they reached a \$6.65 billion annual rate for the second half of calendar year 1976. Table 1 displays the aggregate amounts of aid over this period.

TABLE 1.—PAYMENTS TO STATE AND LOCAL GOVERNMENTS UNDER GENERAL REVENUE SHARING  
[Dollar amounts in millions]

Entitlement period	Amount	Percent increase over previous period <sup>1</sup>
1. Jan. 1, to June 30, 1972.....	\$2,650.0	
2. July 1, to Dec. 30, 1972.....	2,650.0	
3. Jan. 1 to June 30, 1973.....	2,987.5	(12.7)
4. July 1, 1973, to June 30, 1974.....	6,050.0	(1.3)
5. July 1, 1974 to June 30, 1975.....	6,200.0	(2.5)
6. July 1, 1975, to June 30, 1976.....	6,350.0	(2.4)
7. July 1, 1975, to Dec. 31, 1976.....	3,325.0	(4.7)
<b>Total.....</b>	<b>30,212.5</b>	

<sup>1</sup> At annual rates.

The Act provided that the funds be permanently appropriated out of funds attributable to Federal individual income tax collections.

<sup>1</sup> Under Sec. 102 of the Act, revenue sharing payments are made in at least four installments over the "entitlement period" which is generally the Federal fiscal year. The Act permits the Treasury Department to make these payments as late as 5 days after the end of each quarter. The Treasury Department practice has been to make payments of equal size (with some amount (e.g., .5 percent) held back to account for corrections to data, etc. after the close of each quarter. Accordingly, the last checks under the 1972 Act will be mailed out in early January, 1977.

### Issues

There are three funding issues related to the renewal of revenue sharing: the length of the renewal period, the amount of funds to be made available over the period, and the manner in which the funds are to be provided.

1. *Length of renewal period.*—The initial 5-year period was chosen by the Congress to balance its concern that the program be periodically reviewed, and thus made controllable, with the concern that State and local governments be provided sufficient certainty so that they might plan and therefore use the revenue sharing funds most effectively. As the program expires at the end of 1976, and the new Federal fiscal year begins October 1, 1976, the renewal would need to provide initially for a 9-month period, January 1, 1977–September 30, 1977 as well as subsequent 12-month periods from October 1 to September 30.

2. *Funding level.*—Over the 5 years of the Act, annual payments rose from \$5.3 billion to \$6.65 billion or a 25.5 percent increase. During this period, however, the Consumer Price Index rose by more than 35 percent, and the implicit price deflator for State and local purchases of goods and services, a price index for State and local governments, rose by more than 30 percent. Thus, the value of revenue sharing, once corrected for price changes, has declined somewhat over the period of the Act.

In its budget for FY 77, based on the first budget resolution approved by the Congress, the Finance Committee allowed a FY 77 funding level of \$6.9 billion for revenue sharing.

3. *Manner of payment.*—A question arises as to how to continue to provide certainty to the recipients of revenue sharing payments as well as to provide overall control over the revenue sharing program. The provision in the 1972 Act of a permanent appropriation for a limited period of time met these two objectives.

### House bill

The House bill renews revenue sharing for 3¾ years (January 1, 1977 to September 30, 1980). Payments are to be at a constant annual rate of \$6.65 billion per year, and are "entitlement payments," consistent with the Budget Act.

### Analysis of House bill

As it is likely that the price level will continue to rise, the House provision of level funding means that revenue sharing will decline in real value. For example, if prices rise by 3.5 percent per year over the 3¾ year period, the real value of revenue sharing will decline by 14 percent. Put another way, were the amount of revenue sharing to rise by 3.5 percent, this would mean an increase in the first year from \$6.65 to \$6.882 billion. Questions may also be raised whether 3¾ years is a sufficient period of time to provide the certainty to enable States and localities to plan ahead, a policy which the Congress has already favored.

### Alternative proposals

*S. 1625 (Senators Hathaway, Dole, Long, Packwood, and Roth)*

The proposal would extend revenue sharing for  $5\frac{3}{4}$  years, increase the amount available by \$150 million per year, and continue to provide a permanent appropriation by providing an exception for revenue sharing in Sec. 401 (a) and (b) of the Budget Act.

#### *Administration*

The Administration favors a  $5\frac{3}{4}$  year extension, retention of the entitlement approach of the House bill, and a \$150 million per year increase.

#### **Other proposal**

The committee may wish to consider a  $5\frac{3}{4}$ -year extension, an increase of \$150 million per year, and begin this increase October 1, 1977.

## II. DISTRIBUTION OF FUNDS

### **Present law**

1. *Between State formula.*—The amount available to each State area for each entitlement period is allocated on the basis of whichever of two formulas, the “three-factor” formula or the “five-factor” formula, yields the greater portion of \$5.3 billion for that State area. (These formulas allocate funds to a State geographic area for the use of the State government and all the units of local government in the State. The division of funds between the State government and the units of local government in the State is discussed below.)

The three-factor formula is based on a multiplication of population, tax effort, and relative incomes. Population was chosen as a measure of the overall size or the extent of need in each State; tax effort was chosen as a measure of the current fiscal burden each State experiences; and inverse per capita income as a measure of the ability to pay of each State. This formula multiplies the population of the State by its general tax effort,<sup>1</sup> and multiplies this product by the inverse relative per capita money income of the State residents. Here, and in the five-factor formula, the inverse relative per capita income is the per capita income of the United States divided by the per capita money income of a particular State. The formula then compares the resulting product for a State with the sum of the products similarly determined for all of the States and, initially, allocates a State area amount equal to the resulting proportion of \$5.3 billion. If this allocation is determined under this three-factor formula, rather than under the five-factor formula described below, and the State is

<sup>1</sup> Tax effort is total state and local taxes divided by state personal income.

eligible for the "noncontiguous State adjustment,"<sup>2</sup> the basic allocation is increased.

The five-factor formula initially allocates \$5.3 billion among the State areas on the basis of: (1) \$3.5 billion, divided among the States one-third on the basis of population, one-third on the basis of urbanized population,<sup>3</sup> and one-third on the basis of population weighted by inverse relative per capita money income of the State's residents; and (2) \$1.8 billion, divided among the States, one-half on the basis of State individual income tax collections<sup>4</sup> and one-half on the basis of the general tax effort<sup>5</sup> of the State and local governments.

Population was chosen to reflect the overall level of need of each State; urbanized population was chosen to reflect the possible higher costs of providing public services as a result of crowding and diseconomies of scale of cities; population weighted by inverse per capita income was chosen to reflect ability to pay. State income tax collections were included to provide an incentive to States to rely more heavily on State individual income taxes.

Once the greater amount under the five or three-factor formula is determined for each State area, a final allocation of the entitlement period amount is made, based on each State's proportion of the sum of the greater amounts.

Table 2 indicates how much each State area has received through the first six entitlement periods.

<sup>2</sup> Under the noncontiguous State adjustment, the basic allocation for States in which civilian employees of the U.S. Government receive an allowance under sec. 5941 of title 5 of the U.S. Code is increased by this percentage increase in base pay allowance (currently 15 percent of Hawaii and 25 percent for Alaska). The full fiscal year appropriation for this adjustment is \$4.78 million, some of which may not be used because the percentage increase of the basic allocation requires less, or one or both States are not eligible for the percentage adjustment because they receive more under the five-factor formula. This adjustment is taken into account before the determination of whether these States receive more under the three-factor formula or under the five-factor formula, but is provided only if the three-factor formula with the adjustment is more advantageous than the five-factor formula.

<sup>3</sup> Urbanized population, as defined by the Census Bureau is the number of persons living in places of 50,000 or more and in surrounding areas.

<sup>4</sup> Allocation on the basis of State individual income taxes is made by forming the ratio of 15 percent of State individual income taxes (or 1 percent of Federal individual income taxes if the State has no individual income taxes, or 6 percent of Federal individual income tax if the 15 percent amount exceeds the 6 percent amount) to all such taxes.

<sup>5</sup> The general tax effort of a state area is total state and local taxes multiplied times the ratio of state and local taxes to state personal income.

TABLE 2.—REVENUE SHARING ENTITLEMENT PAYMENTS TO STATE AND LOCAL GOVERNMENTS THROUGH JUNE 1976

State name	State	Local governments	Totals
Alabama.....	\$149,116,037	\$298,531,003	\$447,647,040
Alaska.....	11,902,156	23,973,698	35,875,854
Arizona.....	89,744,686	180,819,350	270,564,036
Arkansas.....	97,092,170	180,526,157	277,618,327
California.....	944,559,961	1,889,223,177	2,833,783,138
Colorado.....	94,432,153	188,995,437	283,427,590
Connecticut.....	114,805,142	229,769,469	344,574,611
Delaware.....	29,850,531	50,538,386	80,388,917
District of Columbia.....	117,663,975	-----	117,663,975
Florida.....	265,806,750	532,137,231	797,943,981
Georgia.....	186,641,773	373,131,122	559,772,895
Hawaii.....	39,271,327	78,542,653	117,813,980
Idaho.....	35,814,074	71,636,365	107,450,439
Illinois.....	454,687,884	795,549,790	1,250,237,674
Indiana.....	187,003,285	373,954,183	560,957,468
Iowa.....	123,695,231	247,454,681	371,149,912
Kansas.....	84,653,308	169,273,833	253,927,141
Kentucky.....	164,641,546	271,112,895	435,754,441
Louisiana.....	203,824,770	400,815,526	604,740,296
Maine.....	55,021,536	110,089,459	165,110,995
Maryland.....	176,704,261	353,408,525	530,112,786
Massachusetts.....	283,545,633	568,099,329	851,644,962
Michigan.....	377,364,771	755,684,750	1,133,049,521
Minnesota.....	178,974,882	358,722,999	537,697,881
Mississippi.....	148,139,271	281,223,149	429,362,420
Missouri.....	168,353,209	336,399,256	504,752,465
Montana.....	34,805,430	69,610,423	104,415,853
Nebraska.....	62,753,770	125,506,852	188,260,622
Nevada.....	19,830,841	39,653,229	59,484,070
New Hampshire.....	28,426,219	56,915,591	85,341,810
New Jersey.....	279,600,825	559,407,630	839,008,455
New Mexico.....	57,635,424	111,060,985	168,696,409
New York.....	998,273,997	1,994,186,981	2,992,460,978
North Carolina.....	225,973,387	452,634,804	678,608,191
North Dakota.....	33,253,341	66,503,932	99,757,273
Ohio.....	357,794,899	715,564,724	1,073,359,623
Oklahoma.....	99,632,719	199,238,356	298,871,075
Oregon.....	89,747,716	179,524,072	269,271,788
Pennsylvania.....	469,537,615	939,681,626	1,409,219,241
Rhode Island.....	39,733,881	79,467,764	119,201,645
South Carolina.....	124,988,943	243,981,362	368,970,305
South Dakota.....	38,498,628	77,284,880	115,783,508
Tennessee.....	167,711,660	337,880,824	505,592,484
Texas.....	425,739,933	850,057,216	1,275,797,149
Utah.....	52,546,735	105,103,993	157,650,728
Vermont.....	25,666,164	51,422,229	77,088,393
Virginia.....	177,485,689	362,896,083	540,381,772
Washington.....	128,978,375	257,966,013	386,944,388
West Virginia.....	109,905,179	148,119,669	258,024,848
Wisconsin.....	224,487,574	449,430,522	673,918,096
Wyoming.....	15,900,900	31,801,800	47,702,700
National total.....	9,072,330,166	17,624,513,983	26,696,844,149

Source: U.S. Treasury Department, Office of Revenue Sharing.

2. *Intra-State formula—*

*a. County area allocation*

Under the Act, the amount allocated to a State is divided two-thirds to the local governments in that State and one-third to the State government. The two-thirds available for allocation to the local governments is then allocated among county areas<sup>6</sup> on the basis of the three-factor formula: population multiplied by general tax effort, and that product multiplied by inverse relative per capita income.

In the case of county areas the population taken into account is the population of the county area, the tax effort taken into account is the "adjusted taxes"<sup>7</sup> raised by all units of general government in the county area divided by the total money income of the residents of the county area, and the per capita money income is the total money income of the county area divided by the county area population.

In the case of cities or townships, the population used refers to the population within its political boundaries; the tax effort used is the ratio of its adjusted taxes to the total money income of the residents of the city or township; the per capita income used is the ratio of total money income of the city or township divided by its respective population.

Inverse per capita income is the ratio of the larger geographic unit's per capita income to that of the jurisdiction for which an allocation is being computed. Thus, in the case of a county area allocation, inverse per capita income is the ratio of State per capita income to the county per capita income in question.

Once the initial county area allocation is determined, it is tested against certain maximum and minimum limitations. Specifically, no county area may receive more than 145 percent (nor less than 20 percent, the "floor") of the total per capita amount. The adjustment is made by first testing for the 145-percent "ceiling," and if any areas are above it, reducing them to the ceiling and sharing the difference proportionately among the other areas. If any area is, after application of the ceiling, below the 20-percent amount, it is brought to the 20-percent amount by proportionately reducing other areas which are below the 145-percent level.

*b. Intra-county allocation*

Once each county area allocation has been determined, allocation among types of governments (county, city, township, and Indian

<sup>6</sup> For any part of the State where there is no county, the next unit of local government below the State level will be treated as a county. In other words, this allocation to county areas is intended to cover the entire geographic area of the State, whether or not part of that area is within what is technically called a county and whether or not there are active county governments. Thus, for example, San Francisco and Baltimore cities are treated as county areas, as are the independent cities in Virginia.

<sup>7</sup> "Adjusted taxes" means all tax revenues minus the amount attributable to finance education.

tribes, and Alaskan native villages which perform substantial governmental functions) is made. If there are any Indian tribes or Alaskan native villages, an allocation is made first on the basis of total tribal population as a percentage of the county area population. The remainder of the county area allocation is then divided among the county governments, all cities (if any), and all townships (if any) on the basis of their adjusted taxes.

Table 3 displays these steps for a hypothetical county area with an initial \$1,000,000 county area allocation. Since total tribal population is 10 percent of the county area population, the tribes receive \$100,000; this leaves \$900,000 to be allocated among the county government, all cities, and all townships. Total adjusted taxes are \$10,000,000, of which the county government has 70 percent, the cities 20 percent, and the townships 10 percent. Accordingly, the county government receives \$630,000 (70 percent of \$900,000); the cities receive \$180,000 (20 percent of \$900,000); and the townships receive \$90,000 (10 percent of \$900,000). This division of funds on the basis of taxes was intended to distinguish among fiscally active and inactive types of governments.

TABLE 3.—EXAMPLE OF DIVISION OF \$1,000,000 COUNTY AREA ALLOCATION AMONG TYPES OF GOVERNMENT

	Population	Adjusted taxes	Share of area allocation
Area total.....	100,000	\$10,000,000	
Tribes.....	10,000		\$100,000
County governments.....		7,000,000	630,000
All cities.....		2,000,000	180,000
All townships.....		1,000,000	90,000

*c. Allocation to individual cities or townships*

Once the allocation amount for each type of government is determined, allocation to each individual government is performed. The procedure used to allocate among county areas is also used to allocate among cities and townships. The three-factor formula (population  $\times$  tax effort  $\times$  inverse per capita income) is employed, and the same 145-percent and 20-percent limitations checked. In the above example, the \$180,000 would be shared among the cities on the basis of their population, tax effort, and inverse per capita incomes. Analogously, the \$90,000 would be shared among the townships on the basis of their population, tax effort and inverse per capita incomes. Allocations to cities or townships in excess of the 145-percent limitation are reduced to that level. Allocations to cities or townships below the 20-percent floor are brought to it.

The next step in the allocation formula is to check city or township allocations against the 50-percent limitation. This last limitation provides that no local government<sup>8</sup> may receive revenue sharing pay-

<sup>8</sup> Indian tribes and Alaskan Native villages are excepted from this limitation.

ments of more than 50 percent of its adjusted taxes plus intergovernmental transfers. If the initial allocation to a city or township (but after application of the 145-percent and 20-percent limitations) exceeds this 50-percent limitation, the excess reverts to the county government, and if the county government allocation exceeds the 50-percent limitation, the excess reverts to the State government.

The final step in the allocation formula is to determine if the allocation to a city or township is less than \$200 on an annual basis, or if the city or township has waived receipt of the funds. In either case, the allocation reverts to the county government within which the city or township is located.

In the course of making adjustments of the allocations to county governments and units of local governments under the maximum and minimum limitations, the Secretary of the Treasury, or his delegate, is authorized to decide upon the sequence of adjustments among the local governments within a county area, and among the county areas when the adjustments are made at that level; however, the adjustments are to be made to county areas before any adjustments are made to units of local government within the counties.

*d. Optional formula and special rules*

A State may by law alter the above allocation formula once during the 5 years of the program. Instead of using the three-factor formula, a State may use an average of population times tax effort and population times inverse per capita income. The change which must be made for the entire State may be solely at the county area level, solely at the sub-county level, or both; however, the 20-percent, 145-percent, and 50-percent limitations may not be changed. To date, no State has elected to modify the formula provided in the 1972 legislation.

Special rules are provided for the treatment of cities which are in more than one county. Each part of the city in a separate county is treated as a separate city; the adjusted taxes are prorated on the basis of population. Also, special provision is made for small units of government. In circumstances where a city has a population of less than 500, and when the Secretary finds the data too unreliable, he may make allocations instead on the basis of just population. In the above example, were townships under 500 population to have 10 percent of the total township populations, they would receive \$9,000 (10 percent of \$90,000), and the other townships would share the remaining \$81,000 on the basis of the three-factor formula.

### Issues

1. *20-percent and 50-percent limitations.*—While substantial discretion was provided to the Secretary in working out the details of the sequencing of the lower limitations (the 20-percent and 50-percent rules), questions may be raised about whether the method finally chosen reflects the full intention of Congress with respect to less fiscally active jurisdictions, especially midwestern townships. It has been pointed out by some, including the Comptroller General, that revenue sharing may have propped up local units of government that would otherwise have been consolidated. For example, prior to the announcement of the first payments in 1972, the State of Illinois was considering the elimination of townships; however, as a result of the substantial payments to them, Illinois townships were able to prevail on the legislature to permit their continuation.

The problem of excessive allocations to township governments occurs in county areas where the initial county area allocation is insufficient to bring all the townships (or cities) up to the 20-percent floor. The Treasury Department has elected to finance the raising of townships up to the floor in these situations by reducing the allocations to other county areas. In the midwestern States such as Illinois, this has meant statewide reductions in allocations to other county areas by as much as 6 percent. On the other hand, the allocations provided in 1972 by the Finance Committee in its *Supplemental Report*,<sup>9</sup> show substantially smaller allocations to the townships, beyond that explainable by changes in data than those currently being made.

The impact of the Treasury interpretation of the 20-percent rule for Entitlement Period 6 is displayed in Table 4. Each column corresponds to the possible limitation combination a locality might experience. The situation with respect to the 20-percent limitation is shown in the "at 20 and below 50-percent" column. In many States, raising the townships to the 20 percent floor resulted in smaller allocations to other county areas. Overall, 5,451 townships were so increased, most of which are in midwestern States. Table 5 provides summary comparative data for Entitlement Periods 1 and 6, and indicates the growing number of localities brought to the 20 percent level.

<sup>9</sup> Committee on Finance, U.S. Senate, 92nd Congress, 2nd Session. *Revenue Sharing Act of 1972: Supplemental Report Showing Distribution of Funds, August 16, 1972.* Also, see Staff of the Joint Committee on Internal Revenue Taxation, *General Explanation of the State and Local Assistance Act and the Federal-State Tax Collection Act of 1972*, (February 12, 1973) Table 1, fn. 1; and pp. 33-36, especially fns. 10 and 11.

TABLE 4.—IMPACT OF REVENUE SHARING FORMULA LIMITATIONS ON LOCALITIES FOR ENTITLEMENT PERIOD 6

	Counties						Cities						Townships					
	Not limited	At 145 percent	At 50 percent and above 20 percent	At 50 percent and below 20 percent	At 20 percent and below 50 percent	Below 20 percent and 50 percent Demin.	Not limited	At 145 percent	At 50 percent and above 20 percent	At 50 percent and below 20 percent	At 20 percent and below 50 percent	Below 20 percent and 50 percent Demin.	Not limited	At 145 percent	At 50 percent and above 20 percent	At 50 percent and below 20 percent	At 20 percent and below 50 percent	Below 20 percent and 50 percent Demin.
Alabama.....	63	0	0	0	1	3	263	57	60	8	29	3	0	0	0	0	0	0
Alabama.....	63	0	0	0	1	3	263	57	60	8	29	3	0	0	0	0	0	0
Alaska.....	36	0	0	0	1	0	57	21	6	7	36	3	0	0	0	0	0	0
Arizona.....	12	0	0	0	0	2	54	7	0	0	6	0	0	0	0	0	0	0
Arkansas.....	68	0	7	0	0	0	357	4	47	3	58	3	0	0	0	0	0	0
California.....	56	2	0	0	0	0	362	11	0	0	39	0	0	0	0	0	0	0
Colorado.....	62	0	0	0	0	1	203	12	2	2	42	6	0	0	0	0	0	0
Connecticut.....	8	0	0	0	0	0	26	4	0	1	3	0	140	8	0	0	1	0
Delaware.....	1	0	2	0	0	0	20	10	17	3	5	0	0	0	0	0	0	0
District of Columbia.....	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Florida.....	65	0	0	0	0	2	307	33	0	0	45	6	0	0	0	0	0	0
Georgia.....	153	0	0	0	0	6	388	46	33	13	75	9	0	0	0	0	0	0
Hawaii.....	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Idaho.....	44	0	0	0	0	0	159	4	1	2	29	6	0	0	0	0	0	0
Illinois.....	87	0	0	0	1	14	1,048	14	3	1	246	9	971	17	2	71	375	0
Indiana.....	92	0	0	0	0	0	416	5	0	2	146	7	34	1	2	695	275	1
Iowa.....	99	0	0	0	0	0	315	1	0	0	142	29	0	0	0	0	0	0
Kansas.....	105	0	0	0	0	0	449	2	0	4	157	22	801	6	0	203	224	176
Kentucky.....	84	0	36	0	0	0	164	22	126	29	63	4	0	0	0	0	0	0
Louisiana.....	59	2	0	0	0	4	204	18	20	6	53	2	0	0	0	0	0	0
Maine.....	0	0	0	0	0	16	16	6	0	0	0	0	379	85	4	0	6	0
Maryland.....	23	1	0	0	0	0	108	3	0	1	41	2	0	0	0	0	0	0
Massachusetts.....	3	0	0	0	0	11	38	1	0	0	0	0	290	21	0	0	1	0
Michigan.....	82	0	0	0	0	1	450	43	0	1	51	2	375	16	1	13	540	2
Minnesota.....	87	0	0	0	0	0	659	15	7	4	184	7	899	5	10	40	884	12

Mississippi.....	75	1	6	0	0	0	216	7	34	3	34	0	0	0	0	0	0	0	0
Missouri.....	110	0	1	0	0	3	640	27	30	46	162	29	262	2	14	18	48	0	0
Montana.....	57	0	0	0	0	0	111	0	0	1	13	1	0	0	0	0	0	0	0
Nebraska.....	90	2	0	0	0	1	459	7	0	0	62	12	261	0	3	80	126	16	16
Nevada.....	15	2	0	0	0	0	14	0	0	0	2	0	0	0	0	0	4	0	0
New Hampshire.....	3	0	0	0	0	7	10	3	0	0	0	0	191	25	0	0	5	1	1
New Jersey.....	20	0	0	0	0	1	296	27	0	0	12	0	215	12	0	0	5	0	0
New Mexico.....	27	0	4	0	0	1	60	2	0	0	31	1	0	0	0	0	0	0	0
New York.....	54	0	0	0	1	3	431	5	1	0	187	2	608	20	0	1	300	1	1
North Carolina.....	100	0	0	0	0	0	333	104	13	5	23	6	0	0	0	0	0	0	0
North Dakota.....	53	0	0	0	0	0	266	2	2	0	72	21	1,260	16	2	8	68	14	14
Ohio.....	83	0	0	0	0	5	605	29	2	1	326	8	337	4	0	55	924	0	0
Oklahoma.....	76	0	0	0	0	1	311	26	31	22	167	17	0	0	0	0	0	0	0
Oregon.....	31	0	0	0	1	4	186	19	3	0	34	5	0	0	0	0	0	0	0
Pennsylvania.....	63	0	0	0	0	4	918	14	7	1	79	1	1,352	17	4	3	172	2	2
Rhode Island.....	5	0	0	0	0	0	5	3	0	0	0	0	28	3	0	0	0	0	0
South Carolina.....	46	0	0	0	0	0	105	39	90	5	32	2	0	0	0	0	0	0	0
South Dakota.....	66	0	0	0	0	1	248	1	2	2	55	7	529	4	2	17	391	88	88
Tennessee.....	94	0	0	0	0	1	239	43	4	0	50	2	0	0	0	0	0	0	0
Texas.....	237	10	1	0	0	6	793	14	53	71	139	29	0	0	0	0	0	0	0
Utah.....	29	0	0	0	0	0	158	4	7	7	39	2	0	0	0	0	0	0	0
Vermont.....	0	0	0	0	0	14	41	1	2	9	5	2	178	55	0	0	4	10	10
Virginia.....	112	23	0	0	0	0	129	23	40	1	8	1	0	0	0	0	0	0	0
Washington.....	39	0	0	0	0	0	234	14	0	0	20	2	39	0	0	0	0	0	0
West Virginia.....	18	0	37	0	0	0	67	25	105	31	6	0	0	0	0	0	0	0	0
Wisconsin.....	71	0	0	0	0	1	473	9	0	0	116	4	411	5	0	0	852	2	2
Wyoming.....	23	0	0	0	0	0	68	1	0	0	18	3	0	0	0	0	0	0	0
U.S. total.....	2,889	45	94	0	5	113	13,979	788	748	292	3,142	277	9,560	322	44	1,294	5,451	315	315

Source: Joint Committee Staff tabulations of Entitlement Period 6 data tape from Office of Revenue Sharing (Treasury Department).

TABLE 5.—NUMBER OF LOCALITIES AT VARIOUS LIMITATIONS IN ENTITLEMENT PERIODS 1 AND 6

	Not limited		At 145 percent		At 50 percent and above 20 percent		At 50 percent and below 20 percent		At 20 percent and below 50 percent		Below 20 percent and below 50 percent (de minimus)	
	EP1	EP6	EP1	EP6	EP1	EP6	EP1	EP6	EP1	EP6	EP1	EP6
Counties.....	2,799	2,899	45	45	175	94	2	0	7	5	109	113
Cities.....	13,496	13,979	832	788	1,296	748	358	292	2,731	3,142	296	277
Townships.....	10,237	9,560	419	322	147	44	1,180	1,294	4,625	5,451	341	315
Total.....	26,512	26,438	1,296	1,155	1,617	886	1,540	1,586	7,363	8,598	746	705

Note: Entitlement Period 1 had 39,074 units of local government. Entitlement Period 6 had 39,368 units of local government.

A related question involves the issue of the 50-percent limitation. Some have suggested that it is inappropriate for the Federal Government to provide assistance for up to 50 percent of a jurisdiction's budget. In this view, the interpretation of the 20-percent floor and a rather generous 50-percent level test have both unnecessarily propped up inactive units of local government. Consistent with this view is the observation that a lower-than-50-percent limitation is warranted, especially in light of the 25-percent increase in revenue sharing over the past 5 years.

2. *145-percent ceiling.*—The upper limitation on allocations has also been questioned by some. In this view, the upper limitation prevents jurisdictions with below average per capita income and above average tax effort from gaining the full benefit of these factors. Raising the 145-percent limitation to a higher figure would enable these jurisdictions to benefit more fully.

While certain localities are limited by the 145-percent ceiling, the ceiling also unnecessarily prevents other jurisdictions from gaining because of special circumstances. Many jurisdictions have higher tax efforts as a result of greater sacrifice on the part of residents; however, other jurisdictions benefit from large industrial plants which yield huge property tax receipts, or benefit from substantial taxes as a result of tourism. Table 6 indicates that 28 of the 1,155 local governments at the 145-percent limitation had taxes in excess of 40 percent of their residents' total money income. Also, most (88 percent) of the localities at the 145-percent ceiling are under 10,000 population (see Table 7). Any increase in the ceiling to benefit the larger jurisdictions would have to take account of these resort areas and industrial enclaves.

TABLE 6.—LOCAL GOVERNMENTS AT 145-PERCENT CEILING BY TAX EFFORT FOR ENTITLEMENT PERIOD 6

Tax effort <sup>1</sup>	All	County governments	City governments	Township governments
0.02.....	100	0	99	1
0.22 to 0.025.....	126	0	122	4
0.025 to 0.03.....	159	1	152	6
0.03 to 0.035.....	118	3	92	23
0.035 to 0.04.....	109	7	67	35
0.04 to 0.045.....	82	8	40	34
0.045 to 0.05.....	79	6	33	40
0.05 to 0.055.....	51	2	16	33
0.055 to 0.06.....	42	5	25	12
0.06 to 0.065.....	29	1	11	17
0.065 to 0.07.....	28	1	12	15
0.07 to 0.08.....	23	2	13	8
0.08 to 0.09.....	20	2	7	11
0.09 to 0.10.....	33	0	17	16
0.1 to 0.2.....	27	1	11	15
0.2 to 0.3.....	82	5	41	36
0.3 to 0.4.....	19	0	10	9
0.4 plus.....	28	1	20	7
Total.....	1,155	45	788	322

<sup>1</sup> Ratio of adjusted taxes to total income.

Source: Joint Committee Staff tabulations of Entitlement Period 6 data tape from Office of Revenue Sharing.

TABLE 7.—GOVERNMENTS AT 145-PERCENT CEILING BY POPULATION SIZE AND TYPE FOR ENTITLEMENT PERIOD 6

Population size	Total	County governments	City governments	Township governments
100 or under.....	129	1	44	84
1 to 250.....	118	0	81	37
250 to 500.....	153	1	96	56
500 to 750.....	124	5	66	53
750 to 1,000.....	58	1	39	18
1,000 to 1,250.....	46	2	33	11
1,250 to 1,500.....	58	1	45	12
1,500 to 2,000.....	52	0	40	12
2,000 to 3,000.....	103	1	89	13
3,000 to 4,000.....	48	0	44	4
4,000 to 5,000.....	37	3	28	6
5,000 to 6,000.....	30	1	24	5
6,000 to 7,000.....	26	4	21	1
7,000 to 8,000.....	17	1	16	0
8,000 to 9,000.....	9	2	6	1
9,000 to 10,000.....	10	1	8	1
10,000 to 15,000.....	30	1	27	2
15,000 to 20,000.....	22	4	16	2
20,000 to 25,000.....	13	2	9	2
25,000 to 30,000.....	11	1	10	0
30,000 to 35,000.....	5	0	5	0
35,000 to 40,000.....	4	0	4	0
40,000 to 45,000.....	3	1	2	0
45,000 to 50,000.....	11	1	8	2
50,000 to 60,000.....	6	2	4	0
60,000 to 70,000.....	4	0	4	0
70,000 to 80,000.....	4	1	3	0
80,000 to 90,000.....	1	0	1	0
90,000 to 100,000.....	2	2	0	0
100,000 to 150,000.....	8	3	5	0
150,000 to 200,000.....	2	0	2	0
200,000 to 250,000.....	1	1	0	0
250,000 to 500,000.....	5	1	4	0
500,000 to 1,000,000.....	3	1	2	0
1,000,000 plus.....	2	0	2	0
U.S. Total.....	1,155	45	788	322

Source: Joint Committee Staff tabulations of Entitlement Period 6 data tape from Office of Revenue Sharing.

3. *Division of funds between State government and localities.*— Questions have been raised about the current provision of one-third of revenue sharing funds to State governments. Some contend that State governments have less need for Federal assistance than local governments as a consequence of their more diverse and faster growing tax base.

#### **House bill**

The final House bill did not alter the formulas.

#### **Alternative proposals**

*S. 1625—Senators Hathaway, Dole, Long, Packwood, and Roth*

This proposal would raise the ceiling 6 percentage points per full fiscal year, so that it would increase from 145 percent to 175 percent over 5 years.

*S. 3426—Senator Dole*

This proposal would reduce gradually the 50-percent limitation to 25 percent according to a schedule provided in the bill.

#### *Administration*

The administration recommends four technical changes which they suggest will improve the administration of the current formula. First, they recommend the use of census tax data for the period ending before the beginning of the entitlement period. This would eliminate the necessity for adjustments during an entitlement. Second, they recommend that if an Indian tribe waives receipt of an entitlement payment, it be added to that of the county government as is currently done when cities or townships waive receiving revenue sharing payments. Third, they recommend that the optional formula be available during the renewal period; the House bill did not provide for a revised effective date in sec. 108(c)(1) of the act. Third, they would amend the act to permit them to set aside a small adjustment reserve.

The administration had earlier recommended raising the 145 percent ceiling in six percentage point steps per entitlement period.

#### **Other proposal**

The committee may wish to consider a combination of proposals which would reduce the 50-percent limitation to 25 percent, reduce the 20 percent limitation to 0 percent, and raise the 145 percent ceiling to 175 percent. The reduction of the 20 percent to 0 percent and reduction of the 50 percent limitation to 25 percent solve the problem of excessive allocations to inactive units of government. To prevent localities with unusually high taxes from tourism and industrial plants from receiving excessive allocations, the higher ceiling could be restricted to localities whose tax effort is less than 5 times the average tax effort for that type of government in the State.

The appendix to the pamphlet provides a summary of the effects of these changes for selected States on the basis of \$6.65 billion available for distribution. While the analysis provided assumes the immediate reduction of the limitations and increase in the ceiling, the committee may wish to phase in these changes. To the extent that funding increases, the impact of these changes will also be moderated.

The principal impact of reducing the 50 percent to 25 percent and the 20 percent to 0 percent is to reduce allocations to low tax effort governments; this is especially the case for townships. The result of raising the ceiling is to increase allocations to county areas with high tax effort.

In addition, the committee may wish to consider lowering the State share of revenue to  $\frac{1}{4}$  and providing that any growth in funding be made only available to localities.

The committee may wish to consider adopting a provision which would prohibit the retroactive application of a change in statistical methodology by the Office of Revenue Sharing in the application of the formula which would result in a recipient having to repay revenue sharing funds received in a previous entitlement period. In addition, the committee may wish to require that census tax data be used only for periods ending before the beginning of the next entitlement period; require that if an Indian tribe or an Alaskan native village waives receipt of a revenue sharing payment, it be added to the county government payment; and, provided that the optional formula available under current law be available for the renewal period.

### III. FISCAL REQUIREMENTS

#### Present law

1. *General requirements.*—Under current law, recipient governments must comply with certain fiscal requirements in order to receive revenue sharing payments. In particular, State and local governments must use the funds in accordance with the laws and procedures applicable to the expenditure of their own revenues, establish a trust fund in which the revenue sharing payments are deposited, use the funds in a reasonable period of time, pay prevailing wage rates, pay wages at rates consistent with the Davis-Bacon Act on construction projects funded 25 percent or more by revenue sharing, make annual and interim reports to the Secretary, and in the case of Indian tribes and Alaskan native villages, spend revenue sharing funds only for the benefit of members residing in the county area of allocation.

2. *Priority categories.*—In addition, a locality must spend revenue sharing in priority categories: for ordinary and necessary operating expenses (public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration) and for ordinary and necessary capital expenditures. There are no restrictions on State uses of funds.

3. *Matching prohibition.*—State and local governments are prohibited from using revenue sharing, directly or indirectly, to match other Federal programs.

4. *State maintenance of transfers to localities.*—State governments are required to maintain their intergovernmental transfers (exclusive of those funded by revenue sharing) to all units of local government at fiscal year 1972 levels; revenue sharing payments to a State government are reduced dollar-for-dollar in the event that the maintenance of effort requirement is not fulfilled. This requirement is waived to the extent a State government assumes responsibility for local expenditures, or the State confers a new source of taxing power on the localities.

### House bill

The House bill eliminated the priority expenditure categories, the matching prohibition, and moved the benchmark for the maintenance of effort requirement to fiscal year 1976 when such data becomes available. A new prohibition was added against using the revenue sharing funds for lobbying with respect to revenue sharing legislation. It also added certain new eligibility requirements (discussed below), and substantially stronger civil rights requirements (discussed below).

### Issues

It has been suggested that requiring localities to spend their revenue sharing payments in certain categories is inconsistent with the general philosophy that revenue sharing is designed to provide unrestricted assistance. Also, it is not clear why localities should be required to meet these restrictions, while the States are free to use the funds as they wish. The 1972 Finance Committee bill did not provide for priority categories, although it did contain a State maintenance of effort requirement. Also, to prevent a pyramiding of other Federal funds with revenue sharing, the committee prohibited their use to match other Federal programs.

With respect to the maintenance of effort requirement, the fact that the benchmark against which to test the States is 4 years old may suggest that a more recent period be chosen. Also, in view of the fact that States vary in their fiscal years, the requirement for maintenance of effort might better be in terms of State fiscal years rather than the Federal fiscal year.

Another problem with the maintenance of effort requirement of current law is that it does not provide for circumstances in which the Federal Government assumes responsibilities that were previously State-local (e.g., the Supplemental Security Income Program). Thus, the current requirement could unintentionally penalize State and local governments.

### Alternative proposals

#### *S. 3426 (Senator Dole)*

This proposal eliminates the priority categories, but retains the matching prohibition and maintenance of effort provisions.

#### *Administration*

The Administration favors updating the maintenance of effort benchmark to a more recent period, but prefers that an average of several years be used, and that it follow the fiscal year of the State.<sup>5</sup>

#### **Other proposal**

If the committee decides to continue the maintenance of effort provision, it may wish to provide for a benchmark based on an average over the last two years for which data is available related to the State's fiscal period and to account for situations in which the Federal Government assumes responsibility for local programs that were previously State financed.

<sup>5</sup> Every State is on a July 1 fiscal year except Alabama (October 1), New York (April 1), and Texas (September 1).

#### IV. ELIGIBILITY REQUIREMENTS

##### Present law

To receive funds under the 1972 Act, a government must be a State government<sup>1</sup> or a unit of local government as defined by the Bureau of the Census for general statistical purposes. A unit of local government is further defined in the Act to be a county, municipality, township, or other unit of government<sup>2</sup> below the State, and the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The Census Bureau generally defines a government as: "an organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit."<sup>3</sup> A unit of local government is thus a general government as compared to a single purpose government such as a school district or a mosquito-controlled district.

##### Issues

The question raised with respect to the eligibility requirements of current law involves the adequacy of the Census definition of a unit of local government for legislative purposes. For those who favor a more restrictive definition of a unit of local government, the current definition is defective in that it may include relatively inactive governmental units which should not benefit from such Federal assistance. On the other hand, such governments usually have very low tax effort and at least initially<sup>4</sup> obtain small allocations.

##### House bill

Under the House bill, beginning October 1, 1977, a unit of local government, in addition to the requirement of current law that it be a general government, as defined by the Bureau of the Census, must perform certain functions in order to continue to receive revenue sharing payments. The unit of local government must impose taxes or receive intergovernmental transfers for substantial performance of two of fourteen enumerated categories: (i) police protection, (ii) courts and corrections, (iii) fire protection, (iv) health services, (v) social services for the poor or aged, (vi) public recreation, (vii) public libraries, (viii) zoning or land use planning, (ix) sewage disposal or water supply, (x) solid waste disposal, (xi) pollution abatement, (xii) road or street construction and maintenance, (xiii) mass transportation, and (xiv) education. The House bill deletes the reference in the Act to "other units of local government."

<sup>1</sup> The District of Columbia is treated as a State area for the purposes of the interstate formula, and as a county area which has no units of local government within it. Accordingly, the 1972 Act requires that the District be subject to the priority category expenditure restrictions.

<sup>2</sup> The phrase "other unit of government" has led to some confusion, in that, for the purposes of revenue sharing, the four types of governments (county, city, and township governments, and recognized Indian tribes and Alaska native villages) enumerated are the only ones actually receiving payments.

<sup>3</sup> U.S. Bureau of the Census, *Census of Governments, 1972, Vol. 1 Governmental Organization* (U.S. Government Printing Office, 1973), p. 13.

<sup>4</sup> See section III of this pamphlet on the impact of the Treasury Department's implementation of the 20 percent and 50 percent limitations on township allocations.

Also, at least 10 percent of a local government's expenditures must be spent in each of two of these fourteen service categories. This requirement is not to apply if the locality substantially performs four or more of these public services or performed (and continues to perform) two or more of the public services after January 1, 1976.

The net result of the House provision is to eliminate governments which do not continue to perform two or more of the 14 enumerated services in Federal fiscal year 1978.<sup>5</sup>

#### **Analysis of the House bill**

While the House provision seeks to limit further participation in general revenue sharing, the definitions employed may not be adequate to achieve this result. For example, the 14 categories in the bill do not correspond to any classification scheme currently used by the Bureau of the Census in its statistical efforts relating to revenue sharing, or to its general measurement of local fiscal activity.<sup>6</sup> Thus to apply this provision, a measurement device will have to be created and applied to each of 39,000 local budgets. As a practical matter, localities confronted with this requirement of currently spending in 2 of these 14 categories, so that they may continue to receive revenue sharing payments, will either become more fiscally active than before or fail to accurately fill out the questionnaire. In either event, it would seem that the impact of this type of eligibility standard will be the reverse of that intended.

The Bureau of the Census has estimated that if this requirement had been applied in 1972, 11,806 localities might have been adversely affected. (See table 8.) In preparing this information, the Bureau of the Census emphasized that the 1972 data on which the estimate is based, was collected for primarily statistical purposes and do not correspond entirely to those required in the House bill.

<sup>5</sup> Units of local government (other than Indian tribes and Alaskan native villages) which do not raise \$400 per year in adjusted taxes and intergovernmental transfers would not now or in the future receive revenue sharing payments as a consequence of the 50-percent limitation and \$200 de minimus rule of current law which is continued in the House bill.

<sup>6</sup> U.S. Bureau of the Census, Governments Division, *Classification Manual, Governmental Finances*, Part III.

TABLE 8.—ESTIMATED IMPACT OF HOUSE ELIGIBILITY REQUIREMENT: NUMBER OF UNITS ELIMINATED BY STATE AND TYPE

	Counties	Cities	Towns	Total
United States.....	13	3,874	7,919	11,806
Alabama.....		91		91
Alaska.....	1	14		15
Arizona.....		1		1
Arkansas.....		137		137
California.....		1		1
Colorado.....		48		48
Connecticut.....		3		3
Delaware.....		11		11
District of Columbia.....				
Florida.....		68		68
Georgia.....		133		133
Hawaii.....				
Idaho.....		54		54
Illinois.....		335	96	431
Indiana.....		100	810	910
Iowa.....		249		249
Kansas.....		210	1,170	1,380
Kentucky.....		118		118
Louisiana.....		59		59
Maine.....	1		24	25
Maryland.....		47		47
Massachusetts.....			3	3
Michigan.....		259	793	1,052
Minnesota.....		131	865	996
Mississippi.....		49		49
Missouri.....		267	332	599
Montana.....		20		20
Nebraska.....		167	444	611
Nevada.....			2	2
New Hampshire.....			1	1
New Jersey.....		2		2
New Mexico.....		15		15
New York.....		99	88	187
North Carolina.....		89		89
North Dakota.....		145	1,266	1,411
Ohio.....		116	189	305
Oklahoma.....		126		126
Oregon.....		45		45
Pennsylvania.....		152	625	777
Rhode Island.....				
South Carolina.....		106		106
South Dakota.....		88	947	1,035
Tennessee.....		38		38
Texas.....		236		236
Utah.....		55		55
Vermont.....	11	14	38	63
Virginia.....		66		66
Washington.....		18	12	30
West Virginia.....		54		54
Wisconsin.....		44	493	537
Wyoming.....		18		18

Note: Estimates based on 1972 census of Governments data which, the Census Bureau indicates, only partially reflects the eligibility requirements in the House bill.

### Alternative proposals

#### *Administration*

The administration prefers to delete the House bill's eligibility requirement.

#### **Other proposal**

If the committee decides to delete the House eligibility requirements, it may wish to consider deleting the reference in present law to "other units of local government" which is inoperative. If the committee decides to limit the participation of inactive units of local government in the revenue sharing program, it may wish to modify the allocation formula along the lines suggested in Section III of the pamphlet rather than develop a new definition of a unit of local government.

## V. ACCOUNTING AND AUDITING

### Present law

The Act requires that recipient governments use fiscal accounting and audit procedures in conformity with guidelines developed by the Secretary of the Treasury, after consultation with the Comptroller General. A recipient must also provide the Secretary and the Comptroller General access to its books and documents in order to permit the Secretary to review compliance with the provisions of the Act.

The Secretary of the Treasury is empowered to require such accounting and audit procedures, evaluations, and reviews to insure that expenditures by recipients are made in compliance with the Act. The Secretary may accept a State audit of itself, or a local audit of itself, if the audit and audit procedures are sufficiently reliable. The Comptroller General is required to review the work of the Secretary and the recipients.

In 1973, the Treasury Department issued an audit guide<sup>7</sup> to assist recipients in complying with the requirements of the Act.

### Issues

While the 1972 Act empowers the Secretary through regulation to require auditing procedures to ensure compliance with the Act's provisions (e.g., expenditure of funds in accordance with applicable State and local law, prevailing wages, Davis-Bacon, maintenance of effort, prohibition of matching, high priority categories, nondiscrimination, etc.), the Secretary has not required audits of recipients to ascertain if compliance has been achieved. Treasury regulations issued on the matter of auditing indicate that the Secretary will rely to the maximum extent feasible on audits by State auditors and independent public accountants; however, the regulations do not deal with recipients which do not perform audits of their revenue sharing funds.

Questions may be raised, therefore, about the extent of compliance with the requirements of current law. In reviewing the audit work done by the Treasury, the Comptroller General<sup>8</sup> noted that financial and

<sup>7</sup> Department of the Treasury, Office of Revenue Sharing, *Audit Guide and Standards for Revenue Sharing Recipients*, October, 1973.

<sup>8</sup> Comptroller General, *Revenue Sharing Act Audit Requirements Should Be Changed* (GGD-76-90; July, 1976).

compliance audits are frequently not performed in accordance with the Treasury *Audit Guide*, that in some circumstances the independence of the reported audit may be questioned, that the quality of some audits examined was below that generally accepted by the accounting profession, and that findings of noncompliance have not always been transmitted to the Office of Revenue Sharing. To some extent, these problems occur because the audit staff at the Office of Revenue Sharing is too small (11 professionals) to administer the requirements and to some extent because of the difficulty, in the case of the priority categories, of actually determining how the funds were used.

#### **House bill**

Under the House bill, the Secretary is to require each recipient to conduct an annual independent audit of its financial accounts in accordance with generally accepted auditing standards. The Secretary is considered by some to be authorized to require less formal audits and less frequent audits to the extent a complete audit would be unreasonably burdensome in terms of cost in relation to revenue sharing payments. The Comptroller General is directed to review the performance of the Secretary and the recipients for the purpose of evaluating compliance and operations under the House bill.

The House Government Operations Committee Report elaborates on the auditing standard to be employed, and interprets it to be the standard adopted by the General Accounting Office and the Certified Public Accountants national organization.

#### **Analysis of the House bill**

The House bill addresses itself to the problems in the current auditing requirements; however, the requirement of an annual audit may not be feasible for recipients whose records would not permit, at least initially, an audit of their financial accounts. A second difficulty involves the ability of a recipient to perform an audit of this scope annually (or periodically). It is unclear whether periodic audits of various agencies, which would in the aggregate cover all the agencies over time, would be sufficient, or if a complete audit each year is contemplated by the House bill. A third difficulty with the House provision is the criteria by which the Secretary may partially or entirely exempt recipients from the audit requirements. The bill indicates that in cases when the costs are unreasonably burdensome in relation to the revenue sharing entitlement, the Secretary may waive the requirement; however, it is not clear at what point the audit expenses would become unreasonable.

#### **Alternative proposals**

##### *Administration*

The Administration favors elimination of the House provision or limiting the requirements to a periodic audit of just revenue sharing.

#### **Other proposal**

If the committee wishes there be independent financial audits, it may consider requiring:

- 1) an independent audit of a recipient's financial statements according to generally acceptable accounting standards every three years

with a proviso that a series of audits which aggregate the entire financial activity of the recipient be acceptable;

2) recipients receiving less than \$25,000 per year of revenue sharing funds entitlements would be exempted;

3) for recipients which are not auditable, the audit could be waived if it can be demonstrated (as provided by the Secretary through regulations) that substantial progress toward being auditable is being annually achieved; and

4) coordination of other Federal audit requirements so that duplication of audits is avoided.

## VI. REPORTS, HEARINGS, AND PUBLIC PARTICIPATION

### Present law

The 1972 Act provides that each recipient submit planned and actual use reports for each entitlement period. Both reports must be published in a newspaper of general circulation. Because recipients are required to expend revenue sharing funds according to applicable State and local laws, public hearings may be held on the budgeting of revenue sharing funds.

### Issues

In providing unrestricted assistance to State and local governments, the Congress expected increased citizen participation in the budgetary process to provide the oversight which the imposition of categorical restrictions had sought to achieve in other grant in aid programs. Since enactment, several difficulties in the current reporting requirements have developed which in turn have limited the expected growth in citizen participation. First, the reporting forms developed by the Treasury Department were found not to be informative, especially in relating uses of revenue sharing to the general budget. Also, to make an effective analysis of how revenue sharing funds have in fact been used, it is now generally thought useful to have historical information on how the funds were used, e.g., proposed uses for the coming period as compared to the actual use for the previous period. However, the reports do not now contain this historical information. Because the reports presume a July 1 fiscal year, many localities which are on another fiscal timetable found the forms out of sequence with their budget cycle and the resulting information not as useful as it might otherwise be.

Also, it appears that many recipients do not have public hearings on their budget which permit public participation. A recent survey of State statutes which provide for public hearings and public participation in the preparation of local budgets indicated: (1) in 35 states, citizens or taxpayers had some access to the municipal budget process; (2) in 30 states, citizens or taxpayers had some access to the county budget process; (3) in 23 states, citizens or taxpayers had some access to both the city and county budget process; (4) in 38 states, publication was required giving notice of a proposed budget and/or budget hearings before a final budget could be adopted for a city or county; (5) in one other state, the proposed county budget was open for inspection before final adoption; and (6) in 32 states, statutes

expressly required public hearings before city or county budgets could be finally adopted.

#### House bill

1. *Proposed and actual use reports.*—Under the House bill, State and local governments which expect to receive revenue sharing funds are to submit a report to the Secretary of the Treasury indicating how they expect to use the funds, during the entitlement period. This proposed use report must compare such proposed uses with uses of the funds during the previous two entitlement periods. The report also must include a comparison of the proposed, current, and past use of revenue sharing funds showing the relevant functional items in the official budget involved and indicate whether the proposed use is for a new activity, expansion or continuation of an existing activity, tax stabilization or tax reduction. The Secretary is authorized to prescribe the form, detail and time at which the proposed use report is to be filed.

The House bill requires that, at the close of each entitlement period, each recipient is to submit a report on the actual use of the funds. The report, which is to be available to the public for inspection and reproduction, is to set forth the purposes for which the funds have been appropriated, spent, or obligated. It is to show the relationship of these funds to the official budget and explain differences between the proposed and actual uses of the revenue sharing payments.

2. *Public hearings.*—Two public hearings on the proposed uses of revenue sharing funds are required under the House bill.

Seven or more days before sending the proposed use reports to the Treasury, a recipient must hold a "prereport" hearing at which citizens are to be permitted to provide written and oral comment on the possible uses of the funds. There must be adequate notice of the hearing.

Seven days before the adoption of its budget, as provided under State and local law, a recipient must hold a second ("prebudget") hearing on the proposed uses of the revenue sharing funds. At this hearing, citizens may provide written and oral comment and are to have their questions answered concerning the entire budget and the relation of revenue sharing funds to it. The hearing must be before the body responsible for enacting the budget and is to be at a time and place to encourage public attendance and participation. Senior citizens and senior citizen organizations must have an opportunity to be heard in this hearing process. If applicable local law already assures the opportunity for public attendance and participation contemplated by these two hearings, the Secretary may waive in whole or part the requirement that the two hearings be held.

3. *Notification and publicity of hearings and access to documents.*—Under the House bill, thirty days before the prebudget hearing, each recipient government must publish conspicuously in a newspaper of general circulation a narrative summary of the entire budget and the time and place of the hearing. Also, the recipient must make available to the public in its main office, and at public libraries (if any) within the jurisdiction of the local government, and, in the case of State government, in the main libraries of its major localities, the proposed use report, the narrative summary which was published in

the newspaper, and the official budget. The official budget must show each item that is funded in whole or in part by revenue sharing.

Within thirty days after the adoption of its budget, the recipient government must similarly publish a narrative summary of the final budget, an explanation of differences in the final budget from that proposed, and the relationship between the revenue sharing funds and the functional items of the entire budget. In addition, the summary must be made available in the principal office of the recipient, in public libraries (if any) within the jurisdiction of the local recipient, and, in the case of a State government, in the main public libraries of the major municipalities of the State.

If the cost of the newspaper publication of the narrative summary is unreasonably burdensome in comparison to the revenue sharing payment, otherwise impractical, or the 30-day period before the pre-budget hearing conflicts with applicable law, the Secretary of the Treasury may waive in whole or part the publication requirements or modify the 30-day requirement.

Both proposed and actual use reports of localities filed with the Secretary of the Treasury Department to the Governor of that State. Also, each local recipient within a metropolitan area is to provide a copy of the proposed use report to certain specified areawide organizations.

#### **Analysis of House bill**

While the House bill remedies several of the problems of the reporting and public hearing process of current law, it contains certain provisions, it may be argued, which may limit its effectiveness.

With respect to the hearings required by the House bill, a question may be raised about the utility of two hearings prior to the adoption of the budget, as opposed to a single hearing. While two hearings are required, substantial waiver authority for the Secretary of the Treasury is also provided, with the possible result that current public hearing practices could be continued. There is a related problem in terms of the number of hearings in the case of State governments, for the budgetary process is typically before separate House and Senate appropriations committees. The House bill contemplates two hearings before the body responsible for enacting the budget; in the case of States, such a joint session may not normally occur.

Throughout the section in the House bill on hearings, reference is made to the "official budget document." In many instances, however, there is no specific, legally mandated document, but a series of documents that begins with the executive branch recommendations, and the various appropriations bills considered by the legislature.

A more significant problem may develop under the House bill when the Federal Government begins its new fiscal year on October 1, 1977. Because the House bill actual use report is tied to entitlement periods, which are Federal fiscal years, every State and local government will have to estimate its revenue sharing expenditures over two of their own fiscal years. The information is likely to be unreliable.

The House bill continues the current practice of publishing the proposed use reports in the newspapers; however, it also requires that the report and a narrative summary of the entire budget be conspicu-

ously published in at least one newspaper of general circulation. Questions may be raised about how readily a State or local government may be able to condense a summary of its total budget for newspaper publication. It is understood, for example, that the summary now being annually prepared of the New York State budget runs over 100 pages of normal typescript.

A related difficulty arises in the publication of the proposed use report. The House bill contemplates that the proposed use report should relate the proposed uses of revenue sharing funds to the relevant functional items in the budget. As the number of line items affected may be quite numerous,<sup>1</sup> the resultant document could be too detailed for use and interpretation by the average citizen.

Another aspect of the possible problems associated with publishing the proposed use report is the required deposit of it in the public libraries within the boundaries of the jurisdiction. Since county governments normally contain numerous cities with libraries and branch libraries, the deposit of the proposed use report and the budget could become quite costly.

The difficulties noted are also present in the parallel publication and deposit requirements of the actual use reports.

The effective date for the publication and hearing requirement is January 1, 1977; however, this may not be consistent with the current budget and hearing cycles of State and local governments.

#### **Alternative proposals**

##### *Administration*

The Administration endorses the general principles in the House bill, but is concerned about the workability of many of the specific requirements. It would prefer that the Secretary be given increased discretion to make reporting requirements more suitable to the diverse ways localities currently budget their own revenues.

##### **Other proposal**

If the committee wishes to strengthen the public hearing and reporting requirements, it might require the following:

(1) at least seven days before the adoption of its budget a recipient public hearing on the proposed expenditures of revenue sharing funds. The hearing must be at a place and time that is convenient to general public attendance. At the hearing, citizens would be able to give written and oral comment on the proposed uses of revenue sharing. For State governments, such a hearing would be required before each of the relevant committee or committees of each part of the legislature.

(2) a planned use report following the 12 Bureau of the Census expenditure classifications would have to be published by each recipient (except where its cost exceeds 15 percent of last year's entitlement payment) in a newspaper of general circulation. The report would indicate how last year's revenue sharing was used in the budget, and the proposed designation of the coming fiscal year's expenditures. a short narrative summary would also be published which would

<sup>1</sup> The GAO survey noted that several States indicated that revenue sharing was used proportionately across the entire State budget.

relate the broad uses in the report to the line items in the proposed budget. The newspaper publications would also give notice of the time(s) and place(s) of the public hearing(s);

(3) the Secretary may waive the publication requirement if impractical; and

(4) recipients to file with the Secretary an actual use report based on the same classification scheme as the proposed use report, after the close of its fiscal year.

## VII. NONDISCRIMINATION

The major areas for committee consideration with respect to the nondiscrimination provision are the types of discrimination prohibited, the extent of the application of the prohibitions, the authority and the procedure to be followed by the Office of Revenue Sharing in securing compliance and withholding payment of revenue sharing funds, and citizens' remedies. With respect to each of these major areas for committee consideration, this section sets forth the present law, the House bill provisions, issues, the criticisms, both pro and con, of the House bill provisions, and other alternative proposals.

### TYPES OF DISCRIMINATION PROHIBITED

#### Present law

The present nondiscrimination provision (sec. 122) prohibits discrimination on the basis of race, color, national origin, or sex in any program or activity funded in whole or in part with revenue sharing funds.

#### House bill

The House bill broadened the present nondiscrimination provision by adding further prohibitions against discrimination on the basis of age, handicapped status, and religion.<sup>1</sup>

Title II of the 1964 Civil Rights Act (pertaining to discrimination in places of public accommodation) and Title VIII of the 1968 Civil Rights Act (pertaining to the sale or rental of housing) prohibit discrimination based on religion. The Rehabilitation Act of 1973 prohibits discrimination against "otherwise qualified handicapped individuals" in Federally financed programs, and the Age Discrimination Act of 1975 prohibits unreasonable discrimination on the basis of age in programs and activities receiving Federal financial assistance, including revenue sharing funds. Title VI of the Civil Rights Act of 1964 (relating to nondiscrimination in Federally assisted programs) does not contain any prohibition against discrimination on the grounds of religion.

<sup>1</sup>The House bill directs that the prohibitions against discrimination on account of race, color, religion, sex or national origin be interpreted in accordance with Titles II, III, IV, VI, and VII of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and title IX of the Education Amendments Act of 1972. The prohibition against discrimination on account of age is to be interpreted in accordance with the Age Discrimination Act of 1975. The prohibition against discrimination on account of handicapped status is to be interpreted in accordance with the Rehabilitation Act of 1973. The prohibition against discrimination on account of handicapped status is not to apply to construction projects commenced prior to January 1, 1977.

### Issues

A question has been raised as to whether the reference in the House bill to the interpretation of discrimination on account of race, color, religion, sex, or national origin in accordance with, among other titles, Title VI of the Civil Rights Act of 1964, results in the superimposing of a prohibition against religious discrimination on Title VI. Currently, Title VI permits church-related schools and institutions to grant preference on the basis of religion. In response to this question on the House floor, Representative Barbara Jordan stated that, "since the word 'religion' is not in title 6, we cannot inferentially amend a major title of a civil rights law by simply writing antidiscrimination in an act called general revenue sharing." (Cong. Record, p. H5636, June 10, 1976)

Title VII of the 1964 Civil Rights Act (relating to employment discrimination) exempts from its prohibition religious corporations, associations, educational institutions, or societies. It has been urged that the House bill be clarified to ensure that this exemption carry over in the interpretation of the revenue sharing religious discrimination prohibition.

### Alternative proposals

The Administration states that, in addition to the Revenue Sharing Act, the Treasury Department will probably also be responsible for administering the nondiscrimination provision of the recently enacted "Public Works Employment Act of 1976", which does not contain prohibitions against discrimination on the grounds of either age or handicapped status. It takes the position that, in the interest of orderly administration, these prohibitions contained in the House bill be deleted.

However, as noted above, discriminatory use of revenue sharing funds on account of age is already prohibited by the Age Discrimination Act of 1975. Therefore, deletion of this provision from the House bill would not eliminate the prohibition against the discriminatory use of revenue sharing funds in this manner.

### Other proposal

The committee may wish to clarify certain provisions of the House bill's nondiscrimination provision:

(1) The general prohibition section of the nondiscrimination provision would prohibit "patterns or practices" of discriminatory acts in the various categories. The House bill uses this term throughout the various provisions pertaining to allegations of the Attorney General and findings of courts and administrative agencies, but fails to include the term in the general prohibition section of the nondiscrimination provision.

(2) The exemption contained in Title VII of the 1964 Civil Rights Act (relating to employment discrimination) for religious corporations, associations, educational institutions, or societies would apply to the revenue sharing prohibitions.

(3) In addition to the Age Discrimination Act of 1975 (which, among other things, prohibits the use of revenue sharing funds to discriminate on the basis of age), reference would be made to earlier

enactments relating to age discrimination for purposes of interpreting this prohibition. The Age Discrimination Act of 1975 does not provide any interpretative guidance in this regard.

#### APPLICATION OF PROHIBITIONS

##### Present law

The present nondiscrimination prohibitions are applied to programs or activities funded in whole or part with revenue sharing funds.

##### Issues

It has been the finding of several reports<sup>2</sup> that the prohibition of present law against discrimination in programs or activities receiving revenue sharing funds can be either unintentionally or intentionally circumvented. It is argued that because of the flexibility that a local government has in using revenue sharing funds and the comparable ease with which these funds can be substituted for a government's revenues from other sources, the nondiscrimination provision of present law can be circumvented simply by using revenue sharing funds to free other funds for possible discriminatory uses. Thus, as stated in the Committee Report of the Government Operations Committee of the House of Representatives, reporting out the "Fiscal Amendments of 1976" (Rept. 94-1165, Part 1, May 15, 1976), "the 'fungibility' of shared revenues has sometimes permitted recipients to escape civil rights coverage by designating revenue sharing funds as having been used in programs or activities where discrimination does not exist while using their own freed-up funds in programs or activities which are discriminatory."

The feeling that revenue sharing funds were fungible or nontraceable led the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary to the conclusion that the nondiscrimination provisions were virtually impossible to adequately enforce. Thus, that Subcommittee recommended that the nondiscrimination provision be broadened to apply to all activities of a recipient jurisdiction. The Subcommittee on Intergovernmental Relations of the House Government Operations Committee reported a bill to the full Government Operations Committee incorporating this recommendation. An exception, however, was provided that where clear and convincing evidence was provided that a particular program or activity of a locality was not a direct or indirect recipient of revenue sharing funds, the revenue sharing nondiscrimination provision would be inapplicable.

The House Government Operations Committee and, ultimately, the House of Representatives, adopted the Subcommittee nondiscrimination provision applying the prohibitions to all programs and activities

<sup>2</sup> See U.S. Commission on Civil Rights, "The Federal Civil Rights Enforcement Effort—1974" vol. IV "To Provide Fiscal Assistance" (1975); Center for National Policy Review, *Civil Rights Under General Revenue Sharing* (1975); the National Revenue Sharing Monitoring Project, *Equal Opportunity Under General Revenue Sharing* (1975); Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives (94th Cong., 1st Sess.)—*The Civil Rights Aspects of General Revenue Sharing* (Nov. 1975); and Report to the House Committee on the Judiciary by the Comptroller General of the United States—*Nondiscrimination Provision of the Revenue Sharing Act Should Be Strengthened and Better Enforced* (June 2, 1976).

of a locality except those which provide clear and convincing evidence that they are not directly or indirectly funded with revenue sharing funds.

The problem of fungibility could be said to exist in categorical grant-in-aid programs, in that the funds derived from these grant-in-aid programs can also serve to free-up local funds for other purposes. Yet, it is observed, the nondiscrimination provisions pertaining to these grant-in-aid programs only apply to those programs and not to every program of the locality. The response to this contention is that categorical programs, by their very nature, put Federal funds into relatively narrow and well-defined activities of a State and local government, requiring the government to comply with certain restrictions within the narrowly defined area. Revenue sharing, in contrast, it is pointed out, provides general financial assistance and allows a wide latitude to the State and local governments in designating the areas in which the funds are deemed to be used.

It is argued that by having the prohibition apply to all of a locality's programs and activities, an unreasonable monitoring burden will be placed upon the Office of Revenue Sharing, which, it is acknowledged, already has limited civil rights enforcement manpower. The House bill provides that the Office of Revenue Sharing will enter into agreements with State and other Federal agencies authorizing those agencies to investigate noncompliance with the nondiscrimination provision. In light of this provision of the House bill, it is contended that the Office of Revenue Sharing should be able to limit the extent of its increased effort by closer and more coordinated cooperation with other agencies involved in the enforcement of similar nondiscrimination provisions.

Another argument against the House provision is that it is undesirable, as a matter of policy, to convert the Office of Revenue Sharing into an omnibus civil rights agency with the power to investigate and punish discrimination in any local program once \$1.00 of revenue sharing funds is accepted. It is contended that this policy runs counter to the basic premise of revenue sharing which is non-interference in local affairs.

#### **Alternative proposals**

The administration favors retention of present law in terms of applying the discrimination prohibitions only to those programs and activities which are designated as being funded in whole or part with revenue sharing funds.

#### **Other proposal**

The committee may want to consider applying the prohibitions of the nondiscrimination provision to (1) those programs and activities which are designated as being funded in whole or part with revenue sharing funds, and (2) those programs and activities which, upon the facts and circumstances, are demonstrated to be funded in whole or part with revenue sharing funds.

### **AUTHORITY OF SECRETARY AND PROCEDURE IN WITHHOLDING FUNDS**

#### **Present law**

Under present law, the Secretary is required to notify the Governor of the State (or, in the case of a unit of local government, the Governor

of that State in which the unit is located) of noncompliance with the nondiscrimination provision. The notice is to request the Governor to secure compliance with the nondiscrimination provision and if, within a reasonable period of time, the Governor fails or refuses to secure compliance, the Secretary is then authorized (but not necessarily required) to (1) refer the matter to the Attorney General with the recommendation that appropriate civil action be instituted, (2) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), or (3) take such other actions as may be provided by law.

Generally, Title VI of the Civil Rights Act of 1964 (more specifically, 42 U.S.C. 2000d-1) grants authority to Federal agencies empowered to extend Federal financial assistance to any program or activity to effect compliance with the nondiscrimination provision relating to the particular Federal program involved by the termination of or refusal to grant or to continue assistance under the program or activity with respect to which the recipient, by an express finding on the record, has been found to have been involved in discriminatory activity.

This termination or refusal to grant or to continue Federal financial assistance can only take place after an opportunity for a hearing regarding the matter. However, termination, etc., cannot occur until the Federal agency has advised the persons of noncompliance, determined that compliance cannot be secured by voluntary means, and filed a full report with the committees of the House and Senate having legislative jurisdiction over the program or activity involved. No such action could become effective until 30 days has elapsed after the filing of the report.

The regulations issued by the Office of Revenue Sharing pertaining to the procedure for effecting compliance restate, in substance, the statutory provisions of the Revenue Sharing Act and the above-described provisions of Title VI of the Civil Rights Act of 1964. They provide that a "reasonable period of time" to secure compliance is not to exceed 60 days. The regulations also provide that the Office of Revenue Sharing (seemingly, at the end of the 60-day period) may initiate an administrative hearing in which it could seek an order from an administrative law judge to withhold temporarily, to repay, or to forfeit revenue sharing funds. Even after an administrative law judge has ordered a temporary withholding of funds, withholding would not occur until:

(1) 30 days has elapsed, during which time efforts will have been made to assist the recipient government to comply with the discrimination provision and there has been a submission of a full written report of the circumstances and grounds for withholding of funds to the House Committee on Government Operations and the Senate Finance Committee; and

(2) the Secretary has notified the recipient that it will withhold payment of funds until the recipient complies with the order of the administrative law judge.

These regulations further provide for withholding pursuant to court action. Under this regulation section (51.59(c)), the Office of Revenue Sharing would immediately withhold the payment of an entitlement if: (1) a violation of the revenue sharing nondiscrimination pro-

vision was alleged in a complaint before a court; (2) the court finds that the recipient government has violated the revenue sharing nondiscrimination provision, and (3) the court has failed to pass on the question of whether withholding of revenue sharing funds should take place.

#### Issues

It is alleged that the Office of Revenue Sharing has been unwilling to exercise its discretion to withhold the payment of revenue sharing funds in order to secure compliance with the nondiscrimination provision. Its regulations pertaining to withholding of funds have been described as inadequate. One criticism of these regulations is that they do not provide for temporary withholding in the event that noncompliance is found as a result of investigations by the Office of Revenue Sharing, State human right agencies, and other Federal agencies.

Critics of the regulation provision relating to court action question the requirement that there be a specific revenue sharing charge set forth in the complaint and an express finding of violation of the revenue sharing act, rather than one of the other related Federal civil rights statutes. The contention is that a violation of other related Federal civil rights statutes would also constitute a violation of the revenue sharing civil rights statute and a finding of a violation of these other statutes should be sufficient to trigger a temporary withholding by the Office of Revenue Sharing.<sup>3</sup>

#### House bill

The House bill establishes a set of elaborate compliance procedures which, in certain cases, removes the discretion of the Office of Revenue Sharing and makes mandatory the suspension of revenue sharing payments.

The House Government Operations Committee, in reporting out the bill, felt that the inadequate nondiscrimination enforcement record of the Revenue Sharing Office necessitated the mandating of certain enforcement steps. Thus, the House bill provides a trigger mechanism which determines when the Office of Revenue Sharing will send appropriate notices to possible noncomplying recipients. This notice procedure, in turn, precipitates a possible suspension or ultimate termination of the payment of revenue sharing funds.

This procedure begins with the sending of a notice by the Secretary within 10 days of the occurrence of certain events:

(1) the receipt by the Secretary of a notice of finding by a Federal or State court or by a Federal or State administrative agency of a pattern or practice of discrimination in any of the State's or local unit's activities or programs.<sup>4</sup> The finding received by the Secretary must follow notice and opportunity for a hearing on the recipient's part and the finding must be rendered pursuant to procedures con-

<sup>3</sup>In the case of *United States v. Chicago*, 395 F. Supp. 329 (N.D. Ill. 1974) *aff'd*, 525 F. 2d 695 (7th Cir. 1975), the court's finding of violations of other civil rights provisions resulted in, among other things, the order to withhold revenue sharing funds, notwithstanding the lack of a specific finding of a violation of the revenue sharing nondiscrimination provision.

<sup>4</sup>Neither the House bill nor the committee report pertaining to it provide any guidance as to what constitutes "receipt" by the Secretary of a notice of finding.

sistent with certain provisions of the Administrative Procedures Act;<sup>5</sup>  
or

(2) a determination by the Secretary, after an investigation, but prior to a hearing conducted by the Secretary regarding the matter, that a recipient is not in compliance with the nondiscrimination provision. This determination by the Secretary will be made only after the recipient has had an opportunity to make a documentary submission to the Secretary regarding the allegation of discrimination and whether the program or activity involved has been funded, directly or indirectly, with revenue sharing funds.

The House bill provides that within 90 days after sending notice of noncompliance to the recipient, a voluntary compliance agreement may be entered into. Where there is an affected unit of local government, both the Governor of the State containing the affected unit of local government and the Chief Executive of the affected unit of local government must, along with the Secretary, be signatories to the compliance agreement.

Some contend that the requirement that both the Governor and the Chief Executive of the unit of local government be signatories to the compliance agreement would, as a practical matter, preclude the possibility in many instances of the agreement ever being executed, particularly where the Governor and the Chief Executive officer are in different political parties or are involved in other political conflicts.

Suspension of funds is to occur if within the 90-day period following notification: (1) compliance has not been secured by the Governor or the Chief Executive officer of an affected unit of local government, if any, and (2) at a preliminary hearing (described below) requested by the recipient, an administrative law judge makes a determination that the recipient has failed to show that it is likely that it would prevail at a full compliance hearing on the merits with respect to the issue of noncompliance.<sup>6</sup>

The determination by an administrative law judge at a preliminary hearing<sup>7</sup> that it is likely that the recipient would prevail on the merits at a full compliance hearing results in a deferral of the suspension of payment of revenue sharing funds. Under the House bill, this deferral of suspension would end upon a finding of noncompliance by the Secretary in a full compliance hearing. However, the full compliance hearing will only take place if it is requested by the recipient. If it has succeeded in deferring suspension in the preliminary hearing in this situation, there would not seem to be any reason for the recipient to request a full compliance hearing. There is no mechanism in the House bill which would allow the Secretary to initiate the full compliance hearing in the absence of a suspension.

<sup>5</sup> The House bill and the committee report pertaining to it do not elaborate as to how the Secretary will know whether the recipient had notice and opportunity for a hearing and whether the finding was rendered pursuant to procedures consistent with the Administrative Procedures Act.

<sup>6</sup> The House bill seems to contemplate that within the same 90-day period following notification, the recipient would be negotiating a compliance agreement and also seeking relief at a preliminary hearing from the possible suspension of funds. Some may argue that these concurrent activities are not only inconsistent, but also impractical from the standpoint of time limitations.

<sup>7</sup> Presumably, Federal, State, and local administrative law judges may preside at these hearings.

If suspension does occur at the end of the 90-day period, it is to be effective for not more than 120 days or, if there is a full hearing before the Secretary, not more than 30 days after the conclusion of the full hearing. In the event of suspension and, after notice and opportunity for hearing, the recipient does not participate in the hearing, the Secretary is mandated to make a finding of compliance or noncompliance within the 120-day period following suspension. His finding of noncompliance in this situation results in the indefinite suspension and, where appropriate, his seeking of the repayment of funds previously paid.

Yet another method is provided where suspension of funds could result. The Secretary is to suspend (without any notice) the payment of revenue sharing funds in the event that (1) the Attorney General files a civil action alleging a pattern or practice of discrimination in any program or activity of the recipient, (2) the alleged discrimination (although not necessarily specified) violates the nondiscrimination provisions of the House bill, and (3) within 45 days after the filing of the action, neither party is granted preliminary relief with respect to the suspension of payment of funds.

Separate provision is made under the House bill where the Attorney General's authority is expanded so that he may bring a court action seeking the suspension, termination, repayment, or placing of revenue sharing funds in escrow pending the outcome of litigation. Under current law, the Attorney General is authorized to bring a civil action seeking "such relief as may be appropriate, including injunctive relief."

Thus, while the Attorney General is specifically authorized under the House bill to bring an action seeking the cut-off of revenue sharing funds, his mere bringing of an action involving an allegation of a pattern or practice of discrimination could result in the cut-off of revenue sharing funds within 45 days of the bringing of the action if the recipient fails to obtain a preliminary injunction against the cut-off of the revenue sharing funds within that period of time.

It is argued that the 45-day cut-off provision described above, in conjunction with the Attorney General's expanded authority to seek the cut-off of revenue sharing funds, is excessive, and that in the instance of the 45-day cut-off, where there is no full hearing on the facts or court resolution of the issues, a violation of the recipient's due process rights possibly occurs.

Payment of suspended funds are to be resumed in the following instances: (1) the recipient enters into a compliance agreement with the Secretary; (2) the recipient complies fully with the final order of a Federal or State court which covers all the matters raised by the initial notice of noncompliance;<sup>8</sup> (3) the recipient is found to be in compliance with the nondiscrimination provision by a Federal or State court; (4) after a compliance hearing, the Secretary finds that the recipient is in compliance with the nondiscrimination provision; or (5) in an action brought by the Attorney General, where the recipient

<sup>8</sup> Seemingly, compliance with a final order of a Federal or State administrative agency should also suffice to result in the resumption of the payment of funds, but the House bill is silent in this regard.

failed to obtain preliminary relief within 45 days, thus resulting in a suspension of the payment of funds, the court ultimately orders resumption of payments.

#### **Alternative proposals**

The Administration favors the retention of present law, with minor changes,<sup>9</sup> pertaining to the authority of and the procedure to be followed by the Office of Revenue Sharing in withholding funds and securing compliance.

#### **Other proposal**

The Committee may want to consider adopting the following procedure pertaining to the suspension of payment of revenue sharing funds:

(1) The recipient would have 120 days after receiving notification of noncompliance to enter into a voluntary compliance agreement. If a unit of local government were involved, only the chief executive of that government would be a necessary signator, along with the Secretary, to the compliance agreement. Moreover, if the finding of discrimination which triggered the notice of noncompliance resulted from an administrative hearing within another Federal or State agency, any compliance agreement entered into between the recipient and the other Federal or State agency would constitute a valid compliance agreement for purposes of the nondiscrimination provisions of the Revenue Sharing Act. This will avoid unnecessary duplication of effort otherwise resulting from dual compliance negotiations by different agencies with respect to the same finding of discrimination.

(2) If a voluntary compliance agreement is not entered into within the 120-day period following notification of noncompliance, suspension of funds will occur:

(a) if the notice of noncompliance was based upon a finding of a pattern or practice of discrimination by a Federal or State court; or

(b) if the notice of noncompliance was based upon a finding of a pattern or practice of discrimination by a Federal administrative agency, including the Office of Revenue Sharing, or a State administrative agency, only after a court has affirmed the finding.

**[An alternative to this would provide for suspension if the notice of noncompliance stemmed from a finding of a pattern or practice of discrimination by a Federal or State administrative agency, so long as the recipient was afforded an opportunity for a full hearing on the facts before an administrative law judge.]**

(3) The Attorney General may bring suits seeking the cut-off of revenue sharing funds. Unless the court specifically orders it, the Secretary would not be allowed to cut-off funds upon the mere bringing of an action by the Attorney General alleging a pattern or practice of discrimination.

(4) Payment of suspended funds would be resumed in the following instances: (1) the recipient enters into a compliance agreement; (2) the recipient complies fully with the final order of a Federal or State

<sup>9</sup>The Administration recommends the adoption of the nondiscrimination provision contained in the recently enacted "Public Works Employment Act of 1976." With the exception of some minor changes, this provision is essentially the same as the present revenue sharing nondiscrimination provision.

court or administrative agency which covers all the matters raised by the initial notice of noncompliance; or (3) the recipient is found to be in compliance with the nondiscrimination provision by a Federal or State court.

#### CITIZEN REMEDIES

##### Present law

The Act does not contain any specific provision pertaining to citizen remedies.

##### House bill

A new section (125) is added by the House bill providing that, upon exhaustion of administrative remedies, a civil action may be instituted by an aggrieved person in an appropriate United States District Court or State court. This action, alleging discrimination by a State government or a unit of local government in violation of the revenue sharing nondiscrimination provision, could seek such relief as a temporary restraining order, preliminary or permanent injunction or other order, providing for the suspension, termination, repayment of funds, or placing any further payments of revenue sharing funds in escrow pending the outcome of the litigation.

Administrative remedies will be considered "exhausted" upon the expiration of the 60-day period following the date an administrative complaint is filed with the Office of Revenue Sharing or any other administrative enforcement agency, unless within this time period the agency involved makes a determination on the merits of the complaint, in which case the administrative remedies will not be considered exhausted until the determination becomes final.

This new section also provides that the Attorney General may, upon timely application, intervene in one of these actions if he certifies that the action is of general public importance.

Some contend that the 60-day period provided by the House bill for exhaustion of administrative remedies is too short a period in view of the workload of the Office of Revenue Sharing and the time necessary to investigate an allegation of discrimination. It is argued that the 60-day period provided under the House bill will result in a flood of unnecessary litigation due to the fact that the Office of Revenue Sharing will not be able to properly respond to and investigate a complaint of discrimination within that time period.

Another criticism of the House bill relates to its considering administrative remedies being exhausted if another Federal agency does not make a determination within the 60-day period. In those instances where complaints are brought to other administrative enforcement agencies, the remedy of the cut-off of revenue sharing funds will not have been sought by the complaining party and, moreover, the Office of Revenue Sharing may not be apprised of the bringing of this complaint. It is argued that a suit seeking the cut-off of revenue sharing funds should not be allowed unless a complaint has first been lodged and administrative remedies exhausted within the Office of Revenue Sharing itself.

**Other proposal**

The committee may want to consider the following procedure pertaining to citizen remedies:

(1) Upon exhaustion of administrative remedies, a civil action may be instituted by an aggrieved person in an appropriate United States district court or State court. The action, alleging discrimination by a recipient in violation of the revenue sharing nondiscrimination provision, could seek such relief as a temporary restraining order, preliminary or permanent injunction or other order providing for the suspension, termination, repayment of funds, or placing any further payments of revenue sharing funds in escrow pending the outcome of the litigation.

(2) Administrative remedies will be considered "exhausted" upon:

(a) the expiration of the 90-day period following the date the complaint is filed with the Office of Revenue Sharing, during which time it either fails to issue a determination on the merits of the complaint or it refers the complaint to the Department of Justice, and

(b) following the 90-day period the complaint was filed with the Office of Revenue Sharing, the expiration of the subsequent 90-day period where the complaint is filed with or referred to the Department of Justice, during which time it fails to issue a determination on the merits of the complaint.

[As an alternative, administrative remedies would be considered "exhausted" within the 120-day period that a complaint is filed with either the Office of Revenue Sharing or Department of Justice, during which time no determination is issued on the merits of the complaint.]

(3) As in the House bill, the Attorney General may, upon timely application, intervene in any action brought by a private citizen after that citizen has exhausted his administrative remedies.

**VIII. OTHER AREAS FOR COMMITTEE CONSIDERATION****Study of Federal Fiscal System****Issue**

There have been two major studies of the Federal fiscal system since World War II: the Hoover Commission (1949) which focused primarily on the executive branch of the Federal Government, and the Knestnbaum Commission (1955) which focused on Federal-State-local relations. Both studies were primarily historical and descriptive in nature. Also, the focus of these studies on State-local fiscal relationships and inter-local relations (the relationship of special government's to general governments, for example) was not extensive.

As the Nation has changed substantially in the last 20 years, with markedly different demographic trends, it has been argued by some that another major study of the Federal system of government, but with a slightly different emphasis than previous studies, is warranted. In this view, the recent movement by the Congress to unconditional or less conditional aid to State and local government represents an important turning point in Federal-State-local relations. Accordingly,

it is thought appropriate to include in the study an analysis and evaluation of this increased reliance on block grants.

**Alternative proposals**

Mr. HATHAWAY. This proposal would set up a three year study commission composed of 14 members and a professional staff not to exceed 30 persons. Membership would represent government and the private sector. In order to give significance to the study, it is suggested that a substantial budget be provided to permit the funding of new data collection and outside studies to be performed by the private sector and the academic community.

The study could update earlier studies in the following areas: (a) an examination of the proper distribution of service responsibilities among the three tiers of government; (b) an examination of the proper allocation of taxing powers among the three tiers of government, (for example, the Federal Government has in effect withdrawn from the indirect tax area, leaving the sales tax to the states and localities) and tax coordination problems at the sub-Federal level (e.g., business taxation at the State level), and (c) an examination of the relationship between service and financing responsibilities in particular areas.

The study could also examine the following additional areas: (a) a comparative examination of other Federal systems in terms of the allocation of taxing and spending authorities and coordination agreements, (b) an examination of State and local governmental organization from both a formal (legal) and practical (empirical) point of view to gain an understanding of how, especially at the local level, general governments do and ought to relate to each other and to special districts in terms of service and financing responsibilities, and annexation and incorporation responsibilities, (c) an examination of the effectiveness of Federal stabilization policies on local areas, and the effects of individual State and local fiscal decisions on aggregate economic activity, (d) an examination of the quality of financial control and audit procedures that exists in our Federal system, (e) an examination of the formal and practical aspects of citizen participation in our Federal system, (f) an examination of the Federal role for guarantees of civil rights and liberties in a decentralized Federal system, and (g) an examination of the role the private sector should play in funding and administering existing and needed governmental programs.

### APPENDIX ON IMPACT OF CERTAIN CHANGES IN INTRA-STATE ALLOCATION FORMULA

This appendix displays the impact on States represented by the Finance Committee of certain proposed changes in the intra-state allocation formula.

The three changes displayed result from the cumulative application of the proposals. First, the 50-percent limitation is reduced to 25 percent. Second, the 50-percent limit is reduced to 25 percent, and the 20-percent floor is reduced to 0 percent. Third, the 50-percent limit is reduced to 25 percent, the 25 percent is reduced to 0 percent, and the 145-percent ceiling is raised to 175 percent. In raising the ceiling from 145 percent to 175 percent, only localities with less than 5 times the average tax effort for that type of government are permitted to increase their allocations.

The data used are for Entitlement Period 6. In each of the three changes, the State area amounts are kept constant. Thus, were the changes to be phased in and the amount of funding provided to rise over time, the changes in allocations would be more moderate.

Tables 1-3 summarize the impact on allocations for each of the three changes. Each table displays the number of gainers, average percentage change of gain, the number without change, the number of losers, e.g., those who receive smaller allocations as a result of the change, and the average percentage loss as a result of the change.

Computations underlying these tables were performed by the staff.

TABLE 1.—IMPACT IN SELECTED STATES OF LOWERING THE 50-PERCENT LIMITATION TO 25 PERCENT

	Counties				Cities					Townships					
	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss
Alaska.....	5	0.3	1	0	-----	22	0.4	71	25	-48.9	3	0.4	27	1	-9.5
Arizona.....	3	1.4	11	0	-----	0	-----	62	5	-28.8	NA	-----	-----	-----	-----
Colorado.....	54	.9	8	0	-----	69	.01	158	29	-27.3	-----	-----	-----	-----	-----
Connecticut.....	NA	-----	-----	-----	-----	25	.01	6	2	-26.1	140	.01	9	0	0
Delaware.....	0	-----	0	3	-39.7	2	.06	9	44	-38.2	NA	-----	-----	-----	-----
Georgia.....	146	12.4	3	9	-12.5	103	.62	109	332	-28.1	NA	-----	-----	-----	-----
Indiana.....	90	11.6	1	0	-----	397	6.9	138	32	-18.0	18	5.2	28	961	-45.3
Kansas.....	93	1.1	6	6	-1	365	.9	204	43	-26.0	447	.9	225	406	-57.8
Louisiana.....	32	10.3	1	30	-13.1	2	45.2	49	248	-22.0	NA	-----	-----	-----	-----
Maine.....	11	14.5	0	5	-10.1	15	.02	6	1	-1	241	.1	100	133	-18.9
Minnesota.....	86	1.5	1	0	-----	441	.2	219	208	-20.6	567	.2	726	488	-24.1
Nebraska.....	79	.7	12	2	-1	352	.5	155	16	-16.7	117	.5	90	231	-33.9
Oregon.....	24	5.9	9	3	-.003	5	.008	159	78	-17.4	NA	-----	-----	-----	-----
Tennessee.....	65	2.9	29	0	-----	23	.006	234	79	-19.4	NA	-----	-----	-----	-----
Texas.....	132	1.3	22	100	-17.8	366	.05	127	527	-31.4	NA	-----	-----	-----	-----
Virginia.....	117	2.4	16	0	-----	27	.005	38	133	-33.8	NA	-----	-----	-----	-----
Wisconsin.....	35	.1	35	2	-.006	21	.002	568	9	-5	6	.02	1,254	8	-3.0
Wyoming.....	17	.01	4	2	-3.4	29	.02	55	3	-16.6	NA	-----	-----	-----	-----

TABLE 2.—IMPACT IN SELECTED STATES OF LOWERING THE 50-PERCENT LIMITATION TO 25 PERCENT AND LOWERING THE 20-PERCENT LIMITATION TO 0 PERCENT

	Counties				Cities					Townships					
	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss
Alaska.....	5	2.6	1	0	-----	21	3.2	31	66	-75.6	3	3.2	2	1	-48.5
Arizona.....	11	.5	3	0	-----	44	.1	14	9	-28.5	NA				
Colorado.....	54	1.0	8	0	-----	140	.1	51	65	-31.5	NA				
Connecticut.....	NA				-----	25	.1	4	4	-64.9	141	.1	7	1	-6.0
Delaware.....	0		0	3	-39.7	2	.2	8	45	-42.1	NA				
Georgia.....	147	12.3	1	10	-20.4	130	.2	34	380	-34.3	NA				
Indiana.....	90	11.6	2	0	-----	401	10.1	19	143	-49.4	18	6.8	2	987	-55.7
Kansas.....	96	2.7	4	5	-2	367	2.5	64	180	-49.9	448	2.6	101	529	-66.4
Louisiana.....	40	8.7	1	22	-17.7	70	.1	7	222	-36.1	NA				
Maine.....	11	14.5	0	5	-10.1	15	.1	6	1	-9.9	257	.1	80	137	-19.1
Minnesota.....	87	3.4	0	0	-----	448	2.4	67	353	-33.0	584	2.4	208	989	-47.3
Nebraska.....	80	1.1	10	3	-3	352	.8	96	75	-51.0	117	.8	57	264	-43.7
Oregon.....	31	4.7	3	2	-1	111	.2	26	105	-35.0	NA				
Tennessee.....	94	2.3	0	0	-----	179	.2	32	125	-36.8	NA				
Texas.....	132	1.4	22	100	-17.8	374	.2	56	590	-34.1	NA				
Virginia.....	118	2.4	14	1	-.000	44	.01	15	139	-34.0	NA				
Wisconsin.....	70	3.5	2	0	-----	462	3.6	25	111	-50.9	392	3.5	43	833	-66.1
Wyoming.....	17	.7	3	3	-2.4	40	.9	27	20	-30.5	NA				

TABLE 3.—IMPACT IN SELECTED STATES OF LOWERING THE 50-PERCENT LIMITATION TO 25 PERCENT, LOWERING THE 20-PERCENT LIMITATION TO 0 PERCENT, AND RAISING THE 145-PERCENT LIMITATION TO 175 PERCENT FOR LOCAL GOVERNMENTS WITH TAX EFFORTS LESS THAN 5 TIMES THE STATE AVERAGE

	Counties				Cities				Townships						
	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss	Gainers	Average percent of gain	No change	Losers	Average percent of loss
Alaska.....	2	20.7	0	4	-2.7	66	14.0	3	87	-58.2	2	11.6	0	4	-59.6
Arizona.....	5	11.4	0	9	-9	14	14.3	0	53	-5.7	NA				
Colorado.....	25	13.9	0	37	-7	43	15.6	5	208	-10.1	NA				
Connecticut.....	NA					3	14.0	1	29	-12.8	14	13.8	0	145	-4.2
Delaware.....	0		0	3	-39.7	4	18.5	4	47	-41.4	NA				
Georgia.....	87	16.9	0	71	-5.8	28	9.5	6	510	-27.0	NA				
Indiana.....	91	8.3	1	0		413	9.8	3	151	-48.2	19	5.3	1	987	-56.5
Kansas.....	105	4.0	0	0		432	3.0	2	177	-50.7	543	2.4	6	529	-66.0
Louisiana.....	31	11.6	0	32	-12.5	8	8.6	248	291	-27.9	NA				
Maine.....	11	13.4	0	5	-10.2	6	9.2	0	16	-2.5	60	13.5	11	403	-7.8
Minnesota.....	87	5.5	0	0		518	3.0	2	348	-33.3	810	4.8	3	968	-47.5
Nebraska.....	34	15.1	0	59	-1.1	94	14.8	1	428	-9.5	58	8.3	0	380	-30.7
Oregon.....	19	10.1	0	17	-2.9	30	12.6	0	212	-19.4	NA				
Tennessee.....	40	6.5	0	54	-1.1	31	10.8	2	303	-15.9	NA				
Texas.....	69	11.7	0	185	-10.5	53	16.9	4	963	-21.8	NA				
Virginia.....	23	11.3	0	110	-8.1	9	14.0	0	189	-28.3	NA				
Wisconsin.....	72	4.5	0	0		486	3.9	1	111	-50.9	435	4.5	8	833	-65.9
Wyoming.....	8	11.5	0	15	-4.9	29	6.0	0	58	-13.6	NA				

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., August 13, 1976.

HON. RUSSELL B. LONG,  
Chairman, Committee on Finance,  
U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on H.R. 13367, the Fiscal Assistance Amendments of 1976, as passed by the House of Representatives on June 10, 1976.

The Treasury Department endorses the renewal of the General Revenue Sharing program as proposed by President Ford in S. 1625 (H.R. 6558). While H.R. 13367 extends and maintains much of the essential character of revenue sharing, it varies in several important ways from the President's proposal. Generally the House Bill increases the Federal requirements placed on recipients of shared funds as well as the costs to the Department of administering the program.

Section 5 of H.R. 13367 extends the program for three and three-quarters years, while the President proposed a five and three-quarters year extension. It also omits the provision of S. 1625 which would require the Secretary of the Treasury to make recommendations to Congress concerning a further extension of the program well in advance of the expiration of the renewed revenue sharing program. State and local governments need the longer period of assured funding to plan effectively for use of funds made available.

The Department strongly recommends retention of the "entitlement" mode of funding incorporated into the House bill, which helps to provide assured funding for the renewal period. As a consequence, recipient jurisdictions can incorporate revenue sharing funds into their long range planning activities.

Secondly, the House measure does not provide for the \$150 million annual stair-step increase in appropriations contained in S. 1625 as a modest response to the effects of inflation on the cost of state and local government. We regard this as another weakness of the House-passed legislation.

Thirdly, we urge elimination of Section 7 of H.R. 13367. That section would require that governments impose taxes or receive intergovernmental transfers and spend at least 10 percent of their expenditures on each of two public services listed in the section. If a government performed four of the functions or had been performing two of them since January 1, 1976, the 10 percent standard would not apply.

This eligibility standard would be burdensome and costly for the Department and the Census Bureau to administer. Yet it will likely not solve the problem of distinguishing multifunction from single function governments and active from inactive governments. It is too qualified to be meaningful. Further, the functional expenditure categories utilized in this section vary from established Bureau of Census classification for no apparent reason, and the standard of tax imposition utilized, which is also inconsistent with that used by Census, could prove confusing to recipients.

There are four further amendments bearing on the allocation of funds contained in the Administration bill which are intended to im-

prove the administration of this Federal assistance program and make it more internally consistent. Section 5 of S. 1625 would permit the use of Census tax data for the period ending before the beginning of the entitlement period. This would eliminate the necessity for adjustments during an entitlement period.

The second "technical" amendment is contained in Section 4(a) of S. 1625 and would amend Section 108(b)(4) of the Revenue Sharing Act to distribute entitlements waived by Indian tribes and Alaskan native villages to the government of the county within which they are located, as is the case with entitlements waived by other governments.

Thirdly, Section 4(c) of S. 1625 would amend Section 108(c)(1) of the Act to update to the end of the renewal period the time period during which an optional State formula for local allocations would need to be effective. The House measure does not make such an update.

Finally, Section 1 of S. 1625 would amend Section 108(c)(1) of the Act to give statutory sanction to the current administrative practice of setting aside out of the appropriation for an entitlement period a small adjustment reserve. This is used in making adjustments to final entitlements necessitated by improvements in data without disturbing the entitlements of other jurisdictions.

The Treasury Department feels that H.R. 13367 clearly expands Federal requirements which must be met by recipients of shared funds. The bill similarly increases the cost and burden to be borne by the Department in administering the program. It is most important to consider to what degree these two aspects of H.R. 13367 contradict the basic purpose of General Revenue Sharing.

The first way in which Federal requirements are extensively increased is in the matter of reporting, publicity, and public participation requirements. Section 8 of the House measure would greatly expand the content of the current Planned (renamed "Proposed") and Actual Use Reports and require preparation and publication of a summary of the proposed budget and a narrative of the adopted budget of the recipient government. The basic thrust of these requirements is to relate use of shared revenues to the entire budget of a jurisdiction. Additionally, Section 8 of H.R. 13367 requires reporting on all differences between proposed and actual use of funds, and on whether proposed uses are for new or expanded programs, continuation of present activity, or for tax stabilization or reduction.

Proposed Use Reports, budget summaries, and budget narratives would be required to be published and made available at governmental offices and libraries. Proposed Use Reports would be required to be published and available 30 days prior to the pre-budget hearing also required by Section 8 of the bill. Local Proposed and Actual Use Reports would also be provided to the appropriate Governor by the Secretary. Proposed Use Reports would also be required to be sent to area-wide organizations by governments in metropolitan areas.

H.R. 13367 does give the Secretary of the Treasury some authority to waive certain of the publication requirements to avoid burdens to recipients not commensurate with funds received, to avoid impractical requirements, or to comply with State or local law.

Section 8 of H.R. 13367 further adds extensive requirements to the current Act in an effort to assure greater citizen participation in decisions on the use of revenue sharing funds. State and local recipients would be required to hold two public hearings—one on Proposed Use Reports seven days before their submission to ORS and one on the relation of the use of revenue sharing funds to their entire budgets at least seven days prior to adoption of those budgets. Specific statutory provisions prescribe the notice that would be required to be given for each of those hearings. Further, a specific provision requires assurance that senior citizens and their organizations are given an opportunity to be heard at these hearings.

Section 8 would grant the Secretary authority to waive the pre-budget hearing requirement when adequate processes are already in place and when it would be burdensome or out of proportion to entitlement funds.

We support the idea of encouraging participation by citizens and citizen groups in the decision-making processes of their governments. This is an important part of our system of representative government. We also recognize that such participation depends on an informed public.

However, the Treasury Department believes that the vast expansion of statutory requirements for reporting, publicity, and participation contained in the House bill contradicts the purpose of revenue sharing. It will also increase the cost of administering the program, and really does not guarantee effective public awareness of and participation in revenue sharing-related decision making. As an example of a likely increased administrative burden, it is quite possible that a large percentage of the approximately 39,000 recipient governments will request waivers to the publicity and hearing requirements, each of which must be processed in a reasonable time.

The Administration proposed in S. 1625 that the Secretary of the Treasury be given increased discretion to make reporting requirements more suitable to the variety of reporting units and that jurisdictions provide notice and opportunity for citizens to participate in decisions concerning use of revenue sharing funds. The Treasury Department continues to endorse the principles involved in these proposals, while opposing many of the detailed requirements contained in Section 8 of H.R. 13367.

More specifically, there are two somewhat more technical concerns we have about the reporting requirements of the House bill. First, reporting on use of shared funds should be in terms of the fiscal years of governments, rather than revenue sharing entitlement periods as the bill states. The Bureau of the Census collects its governmental fiscal data in terms of the fiscal years of governments because the data received is more up-to-date and more accurately reflects the fiscal affairs of a recipient government. Secondly, to the degree possible Census Bureau functional expenditure categories should be used on Actual Use Reports. Except for cities under 5,000 population and rural Midwest townships, all governments now report their financial data to Census in these standard terms. These technical changes would make Actual Use Reports more useful to the Federal government,

especially in conjunction with other Census data accumulated over time.

Section 9 of the House-passed revenue sharing renewal bill would provide an elaborate and detailed statutory scheme for dealing with alleged violations by recipient governments of the nondiscrimination provisions. In effect, it seeks to legislate a more vigorous civil rights enforcement program and to impose by statute many procedural requirements usually left to regulations.

The Treasury Department fully endorses the goal that no revenue sharing funds be used in support of discriminatory activities. Our concern with Section 9 is that it may place primary Federal responsibility for assuring nondiscrimination on the part of States and localities in an inappropriate institutional location. Federal agencies other than the Treasury Department are the current major executors of national civil rights legislation. Placing extensive new detailed requirements with Treasury's Office of Revenue Sharing, without considerable expansion of compliance resources, may actually weaken the existing compliance program.

Provisions of H.R. 13367 which would greatly expand Treasury Department civil rights responsibilities include the following:

Extension of nondiscrimination provisions to handicapped status, age, and religion.

The application of these prohibitions to all activities of a government except where it can prove by "clear and convincing evidence" that shared revenues were not involved directly or indirectly.

Notification of noncompliance to a recipient by the Secretary within 10 days after a finding of a pattern or practice of discrimination by any Federal or State agency or any Federal or State court.

A requirement that the Secretary prescribe time limits for actions by cooperating Federal or State agencies.

The House bill also contains a number of time limits for Treasury activities relating to suspension of funds, notification of complainants, the holding of administrative hearings, the making of determinations, and final compliance actions. Further, it provides that administrative remedies shall be deemed exhausted sixty days after the filing of an administrative complaint unless there has been a determination on the merits of such a complaint. At this point or when the determination is final, a complainant could resort to a private civil action.

The antirecession provisions of Title II of the Local Public Works Employment Act, enacted on July 22, are closely related to the provisions of the general revenue sharing laws. The recipients are substantially the same (with the exception of some small governmental units) and the allocations are based on the application of an "excess unemployment percentage" to general revenue sharing entitlements. Because of the close relationship of the two programs, Treasury intends to administer that program through the Office of Revenue Sharing.

Section 207 of that law contains a nondiscrimination provision that is somewhat more detailed than the present revenue sharing law. For example, it adds religion to the prohibited classification. It also, imposes, in section (b), some specific times within which certain enforce-

ment steps must be taken by Treasury. It also authorizes withholding or suspension, in whole or in part, of any payments under that Act as sanctions for discriminatory activity.

We believe that the orderly administration of these two programs requires their nondiscrimination provisions to be, at the least compatible, and preferably identical. It is also unfair and unwise to impose two different sets of standards and two different sets of procedures on recipient governments—one applicable to each of two quarterly checks received from the same office in the Federal government. It is not unlikely that the resulting confusion would more than overcome any advantages gained from the efforts to legislate vigorous enforcement.

We recommend that the nondiscrimination provision of Title II of the Local Public Works Employment Act be used as the starting point for the revenue sharing bill. Any additions to those provisions in the revenue sharing bill should be wholly consistent with those provisions so that a realistic compliance effort can be undertaken.

In addition to reporting and participation standards and nondiscrimination restrictions, H.R. 13367 places important new requirements on recipient units in the area of audit standards. Each program participant would be required to have an annual independent audit of its financial accounts in accordance with generally accepted audit standards, unless the Secretary determined they would be too burdensome. This provision (Section 10) would utilize General Revenue Sharing to require audits not currently undertaken by many governments. It would also place new operational responsibilities on the Office of Revenue Sharing.

Few recipient governments conduct annual audits of their entire budgets. Most recipient governments, including States, have audits conducted by government auditors, some of whom may not be regarded as sufficiently independent. Lastly, many government audits are not conducted in accordance with generally accepted auditing standards.

These requirements will place a heavy burden on recipient governments to change their entire auditing procedures in order to participate in one Federal program. The provisions of the bill will also place a concomitant enforcement burden on the ORS since it is estimated that fewer than one-half of recipient governments can presently produce financial statements meeting these requirements.

These added burdens are by no means consistent with the "no strings attached" policy of the General Revenue Sharing Program. The Department therefore recommends that no change be made in the present audit provisions or that statutory audit requirements be limited to the general requirement of a periodic audit of revenue sharing funds.

A new restriction against use of shared revenues for the purpose of lobbying by recipient governments on legislation related to revenue sharing is added by Section 11 of the House bill. Dues paid to national or State organization of governments are excepted from this restriction. The Committee may wish to consider whether this subject might more appropriately be dealt with in general legislation dealing with the regulation of lobbying activity.

We believe the Senate Finance Committee should give consideration to certain changes in the State maintenance of effort requirement embodied in Section 6 of H.R. 13367. In order to make it possible to administer this provision more effectively, consideration should be given to using an average of several years rather than a fixed calendar year, to determine the base amount against which effort is measured. Also, State transfers should be measured in terms of the State's fiscal year as opposed to the U.S. government fiscal year.

Section 8 of H.R. 13367 would require a report to Congress by the Secretary of the Treasury which is much expanded over that demanded by the current Act. Section 8 would further require submission of this report on January 15, rather than March 1. In order to assure that all necessary data is available for preparation of the Secretary's report, we would urge retention of the March 1st deadline, or alternatively the designation of a February deadline.

Section 123(a)(2) of the Act and Section 51.70(b) of the regulations requires the use, obligation or appropriation of revenue sharing funds within 24 months from the end of the entitlement period to which the check is applicable. In many instances, there will be funds remaining from entitlement periods covered by the present Act, because of the two year period during which recipient governments may expend the funds. Some of such funds may lawfully be expended until January 1, 1979 (or later) and must be spent in accordance with the provisions of the current Revenue Sharing Act and regulations.

Accordingly, many recipient governments will be expending revenue sharing funds covered by two separate acts and with two separate sets of restrictions and prohibitions. This would require, for example, the submission of separate planned and actual use reports, or at least provision on the reports for "old" entitlement funds and "new" entitlement funds. To remedy this situation, the Department recommends that the Act provide specifically that the provisions of the renewal legislation are applicable to all revenue sharing funds not spent by a recipient government prior to January 1, 1977.

A number of provisions in the House bill are of the nature that could cause problems either for Treasury or for recipient governments during a transition period. Accordingly, we believe careful staff attention to the question of effective dates is required.

We stand ready to make available Treasury staff and Treasury resources to work with the Committee and its staff in an effort to produce an acceptable solution to the questions we have raised.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee, and that enactment of S. 1625 would be in accord with the President's program.

Sincerely yours,

RICHARD R. ALBRECHT,  
*General Counsel.*

